SUPREME COURT, U. S.

No. 595

Office-Supreme Court, U.S.
FILED
OCT 15 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

ALICE SCHURINGA, ANNA C. FOUT, DR. PAUL THORELIUS, and JOSE M. LENONE,

Petitioners,

vs.

CITY OF CHICAGO, a Municipal Corporation, RICHARD J. DALEY, individually and as Mayor of said City, CARL H. CHATTERS, individually and as Comptroller of said City, JAMES W. JARDINE, individually and as Commissioner of the Department of Water and Sewers of said City, and W W. DE BERARD, individually and as Deputy Commissioner for Water of said Department and Chief Water Engineer in Charge of the Bureau of Water,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

ALBERT W. DILLING
KIRKPATRICK W. DILLING
188 West Randolph Street
Chicago, Illinois 60601
Attorneys for Petitioners

UNITED STATES LAW PRINTING CO., CHICAGO 38, ILL. LAkeview 5-6581

INDEX.

PAGE

Judgment and Opinion of the Court Below 2

Jurisdiction 2

Questions Presented for Review 2

Constitutional Provisions and Statutes Involved 3

Statement of the Case 4

Questions Presented Raised Below 11

Reasons Relied on for Allowance of the Writ 13

I. It Violates the Religious Freedoms Guaranteed by the First Amendment of the U. S. Constitution to Petitioner Lenone and Other Members of the Christian Science Faith for the City of Chicago to Administer Fluoride to Them Against Their Will 14

Erroneous Attempt to Exclude Petitioner Lenone 15

The Church and Fluoridation 17

Abington and Sherbert Cases 19

II. It Violates the Personal Liberties Guaranteed by the Fourteenth Amendment of the U. S. Constitution to Petitioners Herein for the City of Chicago to Administer Fluoride to Them Against Their Will 23

Kaul v. City of Chehalis 25

PAGE

III. The City of Chicago Has Violated Its Police Powers by Administering Fluoride to Them Against Their Will, When Such Measures Are Not Necessitated by Pressure of Great Public Dangers or Requirements of Public Safety, and Certain Persons Can Actually Be Harmed by Fluoridation 28

Jacobsen Case 29

Lawton v. Steele 30

Some Children Are Bound to Be Harmed 31

Conclusion 35

Appendices:

Appendix A—Opinion of the Illinois Supreme Court ..... App. 1

Appendix B—Petition of Jose M. Lenone ..... App. 16

Appendix C—Counter suggestions re proposed withdrawal, Walter Olson ..... App. 22

Appendix D—Decree and Judgment Entered by Superior Court of Cook County ..... App. 31

Appendix E—Pertinent Portion of Section 26.1, Chapter 110, Illinois Revised Statutes, entitled "Intervention"; and Text of the Resolution Adopted June 16, 1954, Relating to Fluoridation of Drinking Water in the City of Chicago ..... App. 34

Authorities Cited.

U. S. Constitution.

PAGE

First Amendment 2, 3, 4, 10, 11, 12, 14, 19, 22, 25

Fourteenth Amendment 2, 3, 10, 11, 14, 23, 25, 27, 28

Cases.

Abingdon School District v. Schempp, 374 U.S. 203 19

Assn. for Promotion of Health v. Town of Norrkoping, Supreme Administrative Court of Sweden—1961 25

Baer v. Bend, 206 Or. 221 (distinguished) 24

Cantwell v. Connecticut, 310 U.S. 296 14

Chapman v. Shreveport, 225 La. 859, 74 So. 2d 142 (distinguished) 24

DeAryan v. Butler, Mayor, 119 Cal. App. 2d 674, 260 P. 2d 98 (distinguished) 24

Dowell v. Tulsa, 273 P. 2d 859 (distinguished) 24

Everson v. Board of Education, 330 U.S. 1 14

Froncek v. Milwaukee, 269 Wis. 276, 69 N.W. 2d 242 (distinguished) 24

Jacobsen v. Massachusetts, 197 U.S. 1, 25 S. Ct. 358, 49 L. Ed. 643 29

Kaul v. City of Chehalis, 45 Wash. 2d 616, 277 P. 2d 352 (distinguished) 24

Kaul v. City of Chehalis, 45 Wash. 2d 616, 277 P. 2d 352 (dissents) 28, 30

Krause v. Cleveland, 163 Ohio St. 559, 127 N.E. 2d 609 (distinguished) 24

PAGE

Lawton v. Steele, 152 U.S. 133, 14 S. Ct. 499, 38 L. Ed. 385 30

Readey v. St. Louis Water Co., 357 S.W. 2d 622 (distinguished) 24

Schneider v. Irvington, 308 U.S. 137 14

Sherbert v. Verner, 374 U.S. 398, 83 S. Ct. 1790 20

The Municipality of Metropolitan Toronto v. The Corporation of the Village of Forest Hill, 9 DLR 2d 113 25

Wilson v. City of Council Bluffs, 110 N.W. 2d 569 (distinguished) 24

Miscellaneous.

"Fredom of Religion and the Water Supply", by Alan H. Nichols, Esq., Volume 32, Southern California Law Review, at Page 159 17

Section 26.1, Chapter 110, Illinois Revised Statutes..3, 7, 16

Section 9-18, Chicago Municipal Code 29

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

NO.

ALICE SCHURINGA, ANNA C. FOUT, DR. PAUL THORELIUS, and JOSE M. LENONE,

Petitioners,

VS.

CITY OF CHICAGO, a Municipal Corporation, RICHARD J. DALEY, individually and as Mayor of said City, CARL H. CHATTERS, individually and as Comptroller of said City, JAMES W. JARDINE, individually and as Commissioner of the Department of Water and Sewers of said City, and W. W. DE BERARD, individually and as Deputy Commissioner for Water of said Department and Chief Water Engineer in Charge of the Bureau of Water,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

To The Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners Alice Schuringa, Anna C. Fout, Dr. Paul Thorelius, and Jose M. Lenone, respectfully pray that a Writ of Certiorari be issued to review the decision of the Illinois Supreme Court entered in the above cause on March 18, 1964.

JUDGMENT AND OPINION OF THE COURT BELOW

On March 18, 1964, the Supreme Court of Illinois affirmed the judgment of the lower Court in the above-entitled cause. The opinion of the Supreme Court of Illinois is printed and attached hereto, marked "Appendix 'A' ". Said opinion is reported in Volume 198, North Eastern Reporter, 2d Series, at pages 326 through 334, respectively.

JURISDICTION

The opinion of the Supreme Court of Illinois was filed and entered on March 18, 1964. Petitioners, in due time, filed a petition for rehearing, which was denied on May 19, 1964. On August 17, 1964, Honorable Arthur J. Goldberg, one of the Associate Justices of this Court, entered an order extending the time for filing a petition for writ of certiorari herein to and including October 16, 1964.

This Court has jurisdiction to review the final judgment of the Supreme Court of Illinois rendered in this cause by writ of certiorari, under Section 1257(3) of Title 28, United States Code.

QUESTIONS PRESENTED FOR REVIEW

I.

Whether or not it violates the religious freedoms guaranteed by the First Amendment of the U. S. Constitution to Petitioner Lenone and other adherents of the Christian Science faith, for the City of Chicago to "medicate" them against their will with fluoride administered through their water supply.

II.

Whether or not it violates the personal liberties guaranteed by the Fourteenth Amendment of the U. S. Consti-

tution to petitioners herein, for the City of Chicago to "medicate" them against their will with fluoride administered through their water supply.

III.

Whether or not the City of Chicago has violated its police powers by "medicating" petitioners against their will with fluoride administered in their water supply, when such measures are not necessitated by pressure of great public dangers or requirements of public safety, and certain persons can actually be harmed by fluoridation.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The applicable portion of the First Amendment to the U. S. Constitution provides:

> "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

The pertinent portion of the Fourteenth Amendment to the United States Constitution reads as follows:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

For the pertinent portion of Section 26.1, Chapter 110, Illinois Revised Statutes, entitled "Intervention", see Appendix "E" hereto.

For the text of the resolution adopted June 16, 1954, relating to fluoridation of drinking water in the City of Chicago, see Appendix "E" hereto.

STATEMENT OF THE CASE.

This case was filed by Alice Schuringa, Anna C. Fout, Dr. Paul Thorelius, and Walter Olson, taxpayers and contributors to the water fund of the City of Chicago, against the City and certain of its officials, seeking to enjoin the City and those officials from fluoridating the City's water supply. The case was filed shortly after fluoridation of the City's water supply commenced (on May 1, 1956).

In addition to being taxpayers and contributors to the water fund, Alice Schuringa and Anna Fout were housewives, Dr. Thorelius was a dentist, objecting to fluoridation as a member of that profession, and plaintiff Walter Olson was a member of the Christian Science faith, being opposed to fluoridation of the Chicago water supply because of the fact that it violated the religious beliefs and rights of said faith, and the religious freedom of its members, guaranteed to them by the First Amendment of the U. S. Constitution, and Section 3 of Article II of the Illinois Constitution.

The "enacting clause" of the Resolution of the City Council of the City of Chicago involved in this cause (Appendix "E" hereto), adopted June 16, 1954, and purporting to provide for fluoridation of the City's drinking water, is as follows:

> "Now, Therefore, Be It Resolved, That the fluoridation of *the water supplied for drinking purposes* through the Chicago waterworks system is hereby declared to be in the interests of the public health, and that steps for the introduction of fluoride in a concentration adequate for safety and in accordance with the regulations prescribed by the Illinois Department of Public Health be undertaken by the City of Chicago

through its Department of Water and Sewers with the cooperation of the Chicago Board of Health by January 1, 1955." (Emphasis added.)

After a number of preliminary hearings the taking of evidence began on October 17, 1958, before Honorable Mayer Goldberg, Master in Chancery of the Superior Court of Cook County, to whom the case had been referred. Fifty-one hearings were held before Master Goldberg, the last one on December 7, 1960. In support of their plea for a permanent injunction, petitioners called twelve witnesses, including Dr. J. H. Mick of Laurel Springs, New Jersey, Dr. Frederick B. Exner of Seattle, Washington, Dr. George L. Waldbott of Detroit, Michigan, and Dr. Melvin Page of St. Petersburg, Florida, fluoridation experts. In opposition, respondents called thirteen witnesses, including three officials of the City of Chicago water department, Dr. J. R. Blayney, Dr. H. Trendly Dean (known as the "Father of Modern Fluoridation" and originator of the so-called "Dean Studies" which largely form the basis of modern fluoridation), Dr. J. Roy Doty, Dr. John M. Frankel, Dr. Norman H. Olsen, and Dr. Philip H. Suess.

The transcript of proceedings before Master Goldberg aggregates 2930 pages. Master Goldberg rendered an extensive report (Ab. 35),* in which he found all issues in this cause against the plaintiffs and recommended to the Court that the complaint in this cause be dismissed. Plaintiff's objections to the Master's Report were overruled. The Court (Honorable Samuel B. Epstein, presiding) permitted the said objections to stand as plaintiffs' exceptions to the Master's Report and set the matter down

* Note: Reference is to abstract of record filed herein.

for hearing, at the conclusion of which Judge Epstein rendered his judgment (Ab. 109 and "Appendix 'D'" hereto), approving the Master's Report in all respects, and dismissing the complaint in this cause, decreeing however, that because of the nature of the case, the Master's fee in the amount of $6,937.50 should be paid one-half by the plaintiffs and one-half by the defendants.

A direct appeal to the Illinois Supreme Court was then taken. The Supreme Court had jurisdiction to entertain a direct appeal because the case involved the validity or construction of the Resolution purporting to provide for fluoridation of the City of Chicago's drinking water, and involved Constitutional questions; that these matters are involved was recognized and certified by Judge Epstein, the trial judge, in his decree. (Ab. 109 and Appendix "D" hereto)

Briefs of the parties were filed and on November 26, 1963, this cause was argued before the Illinois Supreme Court. After the case had been taken under advisement the late William C. Wines, Esq., at a hearing before Honorable Walter V. Schaefer on December 24, 1963, filed what purportedly was a motion to dismiss the appeal of Plaintiff Walter Olson, and counsel for petitioners was granted leave to file counter-suggestions in opposition to the said motion. The counter-suggestions, dated December 30, 1963, urged that the said motion be dismissed and that this cause be considered on its merits just as it had been submitted to the Illinois Supreme Court on the record, on the briefs of the respective parties, and as it was argued orally. Ample authorities were cited in support of the counter-suggestions (which are hereto appended as "Appendix 'C'"). On December 30, 1963, before an order on the motion had been entered, Walter Olson passed away.

As soon as it was learned that Walter Olson had passed away, on January 10, 1964, a petition was filed by Jose M. Lenone, also a member of the Christian Science faith, seeking leave to intervene as a party in this cause. Said petition, appended hereto as "Appendix 'B' ", was filed pursuant to the provisions of Section 26.1 of the Illinois Civil Practice Act, which permits intervention as of right "when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant will or may be bound by a judgment, decree or order in the action . . . ". Petitioner Lenone sought to intervene because the untimely death of Walter Olson had brought about a situation whereby no Christian Scientist remained a party herein.

On January 21, 1964, the Court denied, without hearing, petitioner Lenone's application to intervene, erroneously, as petitioners contend.

On March 18, 1964, the Illinois Supreme Court affirmed the judgment of the lower Court, its opinion including the following:

> "As to the plaintiff Olson it was contended below and in the brief filed in this Court, that the fluoridation program was compulsory medication which violated the right to religious freedom guaranteed him by the first and fourteenth amendments to the Federal Constitution. However, the latter issue, no stranger to the halls of justice in the setting here raised, . . . has become moot and is no longer an issue in the appeal, under the circumstance that the plaintiff Olson has voluntarily withdrawn and obtained a dismissal of the appeal as it relates to him. It is axiomatic that this Court, *unless the public interest demands it*, will not consider abstract questions, . . . " (Emphasis added.)

The Court's opinion ignored any consideration of the vital religious issues herein as they pertain to petitioner Lenone and other members of the Christian Science faith. Petitioners contend that the public interest did demand consideration of this question by the Court, the continuing administration of fluoride by the City of Chicago to petitioner Lenone and other members of his faith, against their will, and in violation of their religious liberties, certainly being no "moot" matter.

Petitioners have never requested the City to provide dental care. Neither petitioners nor any other citizens of Chicago have had an opportunity to vote for or against fluoridation.

The alleged purpose of fluoridation is to reduce tooth decay in children between the ages of six and twelve years through administration of fluoride in the water they drink The fluoride taken in by the child is distributed systemically, a portion of the fluoride reaching the "tooth buds" of developing teeth before they erupt, or emerge from the gums. It is claimed by proponents of fluoridation that the fluoride incorporated into the tooth enamel during this formative period makes the finally-erupted tooth more resistant to tooth decay. It is not claimed, however, that the fluoride taken in after the teeth are formed and erupted has any effect upon tooth decay. The sole purpose of fluoridation is thus to systemically administer fluoride to children while their teeth are in the formative stage, with the ostensible object of making the enamel in the completed tooth more decay-resistant.

The distribution of fluoridated water by the City during 1958 was 234 gallons per person per day. The fluoridated water so distributed was used not only for "drinking purposes" but for all of the other uses to which water

may be put. (Ab. 244) As already noted, the Resolution of the City Council involved in this cause specified only that steps be taken for fluoridation of "water supplied for drinking purposes" and did not direct that water for every other use be fluoridated. Nevertheless, more than a billion gallons per day is being distributed through the City's water supply system, a comparatively small portion thereof being used for drinking purposes and the rest being used for industrial uses, washing automobiles, flushing toilets, making beer, sprinkling lawns, taking baths, etc.

It is agreed that there are variations in the fluoride content of the fluoridated water at various times and at various places in the water-supply system and that the desired uniformity of fluoride concentrate of one part of fluoride to a million parts of water has not been attained. It is undisputed and conceded by the parties to this cause that a number of other methods of dispensing fluoride are available where the dosage can be controlled and is specifically directed to the individual being treated. (*E.g.*, pills, capsules, solutions, fluoridated milk, fluoridated mouth wash, fluoridated toothpaste, "topical" application —see Ab. 128, 129, 130, 183, 549, 654.)

It is agreed also that there is the widest variability in individual water consumption and that the dosage of fluoride administered ultimately becomes dependent upon the thirst of the water drinker rather than a matter for medical or scientific determination and control.

It is agreed that whether the drinker of fluoridated water gets "too much", "too little", or the "right amount", depends to a large extent upon the amount of such water he or she consumes.

It is agreed herein that proper regulation and control of the amount of the fluoride taken into the system is of

the utmost importance and that consumption of too much fluoride can poison the individual who consumes it and have the most dangerous results.

Admittedly there is only one practicable and public source of water in the City of Chicago. It is contended herein that it violates the religious freedoms guaranteed by the First Amendment of the U. S. Constitution to Petitioner Lenone and other adherents of the Christian Science faith, for the City of Chicago to "medicate" them against their will with fluoride administered through that water supply.

Petitioners also contend that the addition of fluoride to the public water supply of the City results in mass medication and violates the Constitutional rights of the citizens to due process of law guaranteed to them by the Fourteenth Amendment of the Constitution of the United States.

Petitioners further submit herein that the City of Chicago has grossly violated its police powers by "medicating" petitioners against their will with fluoride administered in their water supply, when such measures are not necessitated by pressure of great public dangers or requirements of public safety, and certain persons can actually be harmed by fluoridation.

In this regard, evidence herein not only discloses that the method of administering fluoride in use by the City is wasteful and uneconomic, there being economical, alternative methods available, but the method of administering fluoride adopted by the City also makes it impossible to regulate the dosage of fluoride consumed by the individual water user.

Admittedly, "dental caries", or "tooth decay" is not a contagious or infectious disease which could possibly cause an epidemic, thus requiring application of the City's police

powers to protect the public safety. The evidence herein also conclusively shows that a substantial number of children residing in Chicago will actually be harmed by fluoridation, through causation of "chronic endemic dental fluorosis", or "mottled enamel."

Petitioners contend that any so-called "public health" measure which could possibly harm one child cannot possibly be a valid and legal subject of the exercise of a municipality's police powers.

Questions Presented Raised Below

The third amended petition filed in the trial Court sought to enjoin fluoridation of Chicago's public water supply and attacked the validity of the resolution purporting to direct fluoridation on several grounds. The Constitutional questions were first raised in this cause in said trial Court, and were raised in said petition. It was stated in said petition that there is but one source of public water supply and that compelling one to drink medicated water violates the freedom of religion of a Christian Scientist as guaranteed by the 1st and 14th Amendments to the U. S. Constitution and by Section 3 of Article 2 of the Illinois Constitution. (Ab. 11)

It was also stated in said petition that fluoridation of the Chicago public water supply against the will of plaintiffs deprived them of their liberty and property, in contravention of the 14th amendment to the U. S. Constitution and Section 2 of Article 2 of the Illinois Constitution. (Ab. 15, 16)

These allegations were denied by respondents and that denial was affirmed by the Master and Judge Epstein.

These questions were also raised in the Supreme Court of Illinois by petitioners. For example, in Section V of their brief, the following appears:

> "Administration of Fluoride Through the Public Water System Violates the Fundamental Legal and Constitutional Rights of Plaintiffs and Every Citizen of Chicago, and Especially the Constitutional Rights of Those Persons Who Profess a Belief in the Christian Science Faith, Including Plaintiff Walter Olson."

Questions relating to the use of the City's police powers were also raised in this cause in said trial Court, and were raised in said third amended petition. (Ab. 18, 19)

These questions were also raised in the Supreme Court of Illinois. For example, in Section IV of the brief therein the following appears:

> "The City Council of the City of Chicago grossly exceeded the City's police power when it purported to direct fluoridation of the city's public water supply."

Respondents filed their brief and plaintiffs below filed a "Reply Brief" which also included reference to said matters.

The validity and construction of the resolution and questions relating to said Constitutional matters were also referred to many times in the course of the 51 hearings held before the Master, in hearings before Judge Epstein, and in argument before the Illinois Supreme Court.

The Illinois Supreme Court, in affirming the trial Court, denied that fluoridation of the Chicago water supply violated the City's police powers or violated constitutional guarantees of due process of law, and, as previously noted, ignored as "moot" questions relating to the medication against their will of Christian Scientists through administration of fluoride, and whether or not this is a violation of religious freedoms guaranteed by the First Amendment.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

This Court has yet to rule concerning the important Constitutional issues raised by fluoridation. This cause, termed by the Master as the "most exhaustive judicial investigation ever conducted" as to fluoridation, presents those issues to the Court fully and completely for the first time.

Petitioners believe that the basic and fundamental issue involved in this cause is whether or not the citizens of Chicago shall have the "individual choice" and freedom as to their medication which has always been the Constitutional birth right of every American, or whether "state compulsion" under the Aldermen of the Chicago City Council shall take its place.

Petitioners submit that the rights of freedom of religion and freedom from "mass medication" transcend all other issues involved in this cause. They respectfully submit that these rights, as protected and guaranteed by the United States Constitution, have been, and are being violated.

Petitioners most earnestly pray that this Court shall protect and maintain their valued rights and freedoms by granting the Writ of Certiorari here sought, and, ultimately, after review of this cause, by permanently enjoining fluoridation of the Chicago water supply.

I.

IT VIOLATES THE RELIGIOUS FREEDOMS GUARANTEED BY THE FIRST AMENDMENT OF THE U. S. CONSTITUTION TO PETITIONER LENONE AND OTHER MEMBERS OF THE CHRISTIAN SCIENCE FAITH FOR THE CITY OF CHICAGO TO ADMINISTER FLUORIDE TO THEM AGAINST THEIR WILL.

Petitioner Lenone respectfully submits that fluoridation of the Chicago water supply infringes and violates his right to religious freedom guaranteed by virtue of the United States Constitution, prohibiting the free exercise of his religion.

The applicable portion of the First Amendment to the U. S. Constitution provides that "Congress shall make no law respecting an establishment of religion, *or prohibiting the free exercise thereof.*" (Emphasis added.) The Fourteenth Amendment makes the prohibition applicable to the States, which, of course, would include any subdivision thereof, and, in the case at bar, the City of Chicago.

This Court has held in *Cantwell* v. *Connecticut,* 310 U.S. 296, at page 303:

> "The fundamental concept of liberty embodied in that Amendment (Fourteenth) embraces the liberties guaranteed by the First Amendment."

See also *Everson* v. *Board of Education,* 330 U.S. 1, 15, and *Schneider* v. *Irvington,* 308 U.S. 137, 160.

It cannot be gainsaid that all of the petitioners in this cause are being subjected, *against their will,* to medication added to their sole source of water supply. So, also, are the other citizens of Chicago. They have not been accorded an opportunity to vote for or against fluorida-

tion, but have had it literally forced upon them, by a majority of the Aldermen composing the City Council, through a mere resolution.

Of even greater importance, however, is the fact that it has been established and cannot be denied that the religious liberty of one of the petitioners in this cause, Jose M. Lenone, has been, and is being, violated daily by fluoridation of the water he of practical necessity has to drink.

In this regard he is representative of the many thousands of other members of the Christian Science Church in Chicago who are likewise forced to submit to the medication of their drinking water and whose guaranteed religious freedom is also being violated and rendered meaningless.

Petitioner Lenone is a retired Lieutenant Colonel in the United States Army Reserve. He has been a resident of the City of Chicago since 1911, and is and since 1913 has been, a member of The First Church of Christ, Scientist, Boston, Massachusetts, the so-called "Mother Church". He is, and since 1914 has been, also a member of the Fifth Church of Christ, Scientist, Chicago, having been the President of the Board of Directors of said Fifth Church and also its Treasurer. (See Appendix "B" hereto)

Erroneous Attempt to Exclude Petitioner Lenone

As previously noted, shortly before plaintiff Walter Olson, passed away, a motion to dismiss his appeal, then already argued and under advisement, was filed with the Illinois Supreme Court. However, on December 30, 1963, before an order on the motion was entered, he passed away. Petitioner Lenone immediately sought to intervene because the untimely death of Walter Olson had brought

about a situation whereby no Christian Scientist remained a party herein. (See Appendix B herein for the text of his petition.)

Section 26.1 of the Illinois Civil Practice Act provides for intervention *as of right* "when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant will or may be bound by a judgment, decree or order in the action . . ." (See Appendix "E" hereto for applicable text.) Despite the fact that Petitioner Lenone's application to intervene was in meticulous compliance with this statute, the Court denied it, arbitrarily and without hearing. Its opinion herein, rendered subsequently, dismissed the vital religious issues herein as being "moot", the opinion also stating "this Court, *unless the public interest demands it*, will not consider abstract questions . . ." (Emphasis added)

Petitioners respectfully submit that the "public interest" did demand consideration of these questions by the Court, and that it was grossly erroneous for the lower Court to deny intervention to Petitioner Lenone and to ignore the important religious issues involved herein.

Petitioner Lenone believes in and subscribes to the tenets, beliefs, and doctrine of the Christian Science Church. As to these tenets, Plaintiff Walter Olson testified in this cause:

> "The doctrine of the Christian Science Church denies the beneficial effect of material remedies and teaches sole reliance on the power of God. The Church is affirmatively opposed to material medicine as to its members."

This testimony, and all other evidence rendered herein by plaintiff Olson, remains unchanged, unrefuted, and undenied.

Concerning this evidence, Petitioner Lenone states (see Appendix "B" hereto):

> "The stand and position taken by Walter Olson herein was precisely representative of the stand and position heretofore held, and now held, by your petitioner with respect to fluoridation of the Chicago water supply, and particularly with regard to petitioner's religious Christian Science beliefs and rights."

Petitioner Lenone has further stated herein (see Appendix "B" hereto) that he is opposed to the use of medication of any kind and objects to mass medication through the addition of a fluoride to his drinking water, and that the public water supply of the City of Chicago is the only public and practicable water supply available to him. He states that he therefore drinks fluoridated water under compulsion in spite of his strong religious objections thereto.

The Church and Fluoridation

Other Christian Scientists, high in the councils of their Church, have stated their objections on religious grounds to fluoridation in official policy statements, as is stated in the article by Alan H. Nichols, Esq., entitled "Freedom of Religion and the Water Supply", in Volume 32, Southern California Law Review. That article is a well-documented and exhaustive one on the subject, and the attention of the Court is respectfully directed to it. Of particular interest so far as the case at bar is concerned is the following, commencing at page 159:

> "This mixture of fluoridation and religious freedom is neither hypothetical nor unrealistic. For example, Christian Scientists have stated their objections on religious grounds to fluoridation in official policy statements and under oath in at least one legal proceeding."

In a foot-note on page 159 as an example of "official policy statements" of Christian Scientists, the following appears:

> "Statement of Inman H. Douglas, Manager of Washington, D. C., office of the Christian Science Committee on Publication as authorized by the First Church of Christ Scientist, Boston, Massachusetts. *Hearings Before the Senate Committee on Constitutional Rights*, 84 Cong., 1st Sess. 3-6, 8 (1955)."

In another foot-note on the same page, the legal proceeding referred to is given as:

> "*City of Oroville* v. *California Water Service Co., supra* note 1. Hearings before the Public Utilities Commission Examiner. See comments, McChesney of the Northern California Committee on Publication of the Christian Science Church, transcript at 518, 521; Riley of the Southern California Committee on Publication of the Christian Science Church, transcript at 533-35; Petitioner Clark transcript at 520."

Another foot-note appearing on the same page is as follows:

> "This Church has always opposed the use of drugs, and fluorides are drugs. . . . A drug is 'any substance used as a medicine'. A medicine is 'any preparation used in treating a disease'. Webster's New Inter-Collegiate Dictionary (1951). Fluorides as used in the water supply are for treatment of the disease of dental caries."

Regarding a situation such as is involved in the case at bar, this article states:

> "If fluoridation were upheld in the highest available state or federal court contrary to a petitioner's claim of religious liberty, an appeal would lie to the United States Supreme Court.

> "For purposes of discussion the stage has been set. The United States Supreme Court would have to decide: Are the basic principles of religious freedom, as previously announced, to be followed? How are these principles to be applied in a specific case like the fluoridation of water supplies?"

After a lengthy and penetrating analysis of all the legal and Constitutional questions involved, the article concludes with the following (page 176):

> "*Fluoridation of public water supplies is a deprivation of religious liberty* and does not fall within the exceptions of immorality, interference with the liberty of others or clear and present danger." (Emphasis added.)

Abingdon and Sherbert Cases

On June 17, 1963, this Court issued its decisions in the cases of *Abingdon School District* v. *Schempp* and *Murray* v. *Curtlett* (374 U. S. 203).

The *Abingdon* and *Murray* cases involved the constitutionality of prayers and Bible reading in public schools, when heard at the option of the pupil involved. This elective procedure was ruled unconstitutional by this Court as infringing upon the religious guarantees of the First Amendment. The majority opinion, rendered by Mr. Justice Clark, contains a penetrating analysis of the purview and sweep of these guarantees, most applicable to the case at bar.

Said opinion states in part:

> "The test may be stated as follows: What are the purpose and the primary effect of the enactment?
>
> "If either is the advancement or inhibition of religion then the enactment exceeds the scope of legis-

lative power as circumscribed by the Constitution. That is to say that to withstand the structures of the establishment clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion. *Everson* v. *Board of Education, supra; McGowan* v. *Maryland, supra,* at 442.

"The free exercise clause, likewise considered many times here, withdraws from legislative power, State and Federal, *the exertion of any restraint on the free exercise of religion.* Its purpose is to secure religious liberty in the individual by prohibiting any invasions thereof by civil authority."

And:

"Further, it is no defense to urge that the religious practice here may be relatively minor encroachments on the First Amendment. The breach of neutrality that is today a trickling stream may all too soon become a raging torrent and, in the words of Madison, 'it is proper to take alarm at the first experiment on our liberties'."

On June 17, 1963, this Court also rendered its decision in the case of *Sherbert* v. *Verner,* 374 U.S. 398, 83 S. Ct. 1790.

In the *Sherbert* case a Seventh Day Adventist had declined, because of her religious beliefs, to work on Saturday, and she was discharged by her employer. Unemployment compensation was refused because she declined to accept any employment which involved Saturday work. The South Carolina Supreme Court upheld the denial of compensation, but this Court reversed.

The opinion by Mr. Justice Brennan states (p. 403):

". . . it is true that no criminal sanctions directly compel appellant to work a six-day week. But this

> is only the beginning, not the end, of our inquiry. For '(i)f the purpose or effect of a law is to impede the observance of one or all religions or is to discriminate invidiously between religions, that law is constitutionally invalid even though the burden may be characterized as being only indirect' ".

And (page 404):

> "The ruling forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand. Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship."

Noting that only extreme conditions merit any restriction of religious liberty, Mr. Justice Brennan stated (page 406):

> "It is basic that no showing merely of a rational relationship to some colorable state interest would suffice; in this highly sensitive constitutional area, '(o)nly the gravest abuses, endangering paramount interests, give occasion for permissible limitation,' *Thomas* v. *Collins*, 323 U.S. 516, 530. No such abuse or danger has been advanced in the present case."

Mr. Justice Douglas wrote a separate concurring opinion. He noted that there are people of many diverse faiths, and he reviewed some of their beliefs. He then stated (page 411):

> "These suffice however, to show that many people hold beliefs alien to the majority of our society—beliefs that are protected by the First Amendment but which could easily be trod upon under the guise of 'police' or 'health' regulations reflecting the majority's views."

And (page 412):

> "The harm is the interference with the individual's scruples or conscience—an important area of privacy which the First Amendment fences off from government. The interference here is as plain as it is in Soviet Russia, where a churchgoer is given a second-class citizenship, resulting in harm though perhaps not in measurable damages.
>
> "This case is resolvable not in terms of what an individual can demand of government, but solely in terms of what government may not do to an individual in violation of his religious scruples."

It will be apparent to the Court that the religious deprivations involved in the case at bar go far beyond those which impelled our highest Court to act in the *Abingdon* and *Sherbert* cases, cited above.

The coercive effect of fluoridation, so far as Petitioner Jose Lenone is concerned, is that it prohibits him from exercising freedom as to whether or not he should be forced to drink water to which a drug (fluoride) has been added, in direct violation of one of the fundamental principles of his Christian Science faith, and in direct violation of the "free exercise clause" of the First Amendment, which guarantees complete freedom in the practice of his religion.

Christian Scientists do not believe in drugs or medication of any sort for the treatment of disease but rely solely upon prayer and divine intervention. Naturally, they are opposed to having the public water supply, which they must use because no other ready or public source of supply is available, fluoridated subjecting them to mass medication against their will and in violation of the right guaranteed them by the United States Constitution to be uninhibited *in the exercise* of their religious freedom.

In imposing fluoridation of Chicago's public water supply upon the citizens of Chicago, the City Council "inhibited", and continues each day to "inhibit" the exercise of religious freedom by the citizens of a very substantial segment of Chicago's population, namely, Petitioner Lenone and others (numbering many thousands) who profess a belief in the Christian Science faith and its principles.

Petitioner Lenone most earnestly prays that this Court shall protect and maintain his precious and valued right of freedom of religion by granting the writ of certiorari here sought, and by ultimately decreeing herein that fluoridation of the Chicago water supply shall be permanently enjoined.

II.

IT VIOLATES THE PERSONAL LIBERTIES GUARANTEED BY THE FOURTEENTH AMENDMENT OF THE U. S. CONSTITUTION TO PETITIONERS HEREIN FOR THE CITY OF CHICAGO TO ADMINISTER FLUORIDE TO THEM AGAINST THEIR WILL.

Fluoridation of the public water supply of the City of Chicago by adding a fluoride, a deadly poison, forcing the citizens against their will to drink the water because there is no other ready supply available, violates the right of all Chicago's citizens to that due process of law guaranteed by the Fourteenth Amendment to the United States Constitution.

There are, of course, some cases in which fluoridation of a public water supply has been upheld. Some of these will be referred to below. There are also cases in which fluoridation has been disapproved.

Decisions were rendered permitting fluoridation in:

Chapman v. *Shreveport*, 225 La. 859, 74 So. 2d 142;
Dowell v. *Tulsa*, 273 P. 2d 859;
DeAryan v. *Butler, Mayor*, 119 Cal. App. 2d 674, 260 P. 2d 98;
Readey v. *St. Louis Water Co.*, 357 S.W. 2d 622;
Wilson v. *City of Council Bluffs*, 110 N.W. 2d 569;
Krause v. *Cleveland*, 163 Ohio St. 559, 127 N.E. 2d 609;
Baer v. *Bend*, 206 Or. 221;
Froncek v. *Milwaukee*, 269 Wis. 276, 69 N.W. 2d 242;
Kaul v. *City of Chehalis*, 45 Wash. 2d 616, 277 P. 2d 352.

In several of the above cases, writs of certiorari were denied by this Court.

Although some of the above cases might at first blush seem persuasive so far as the case at bar is concerned, a reading of the decisions discloses some basic differences between them and this cause in the factual situations considered:

1. In the decisions permitting fluoridation, the respective Courts apparently assumed that fluoridation as such would be beneficial to all the children treated. None of the Courts had before them the evidence adduced in this cause demonstrating the questionable scientific basis of the whole fluoridation thesis, its experimental nature, and the fact that there is no real proof that it actually does reduce prevalence of tooth decay.

2. None of the Courts rendering the above decisions had before them the proof adduced in this cause, show-

ing the definite harm which accrues to a high proportion of the children treated from administration of fluorides, and the potential damage which can occur to members of the population as a whole. Plaintiffs submit that no Court of justice anywhere would knowingly sanction a program which, under the pretense of *benefitting* public health, *actually causes harm* to some individuals who are subjected to it.

3. None of the Courts rendering the above decisions had before them an applicant for relief who, like petitioner Lenone in the case at bar, was actually being deprived of the religious freedom guaranteed to him under the First and Fourteenth Amendments to the United States Constitution. In this respect, this is a case of first impression anywhere.

Elsewhere, for example, in Canada and Sweden, Courts of last resort have ruled against fluoridation. See *The Municipality of Metropolitan Toronto* v. *The Corporation of the Village of Forest Hill* (9 DLR 2d 113), Supreme Court of Canada—1957, and *Assn. for Promotion of Health* v. *Town of Norrkoping*, Supreme Administrative Court of Sweden—1961.

Kaul v. City of Chehalis.

The case of *Kaul* v. *City of Chehalis*, 45 Wash. 2d 616, 277 P. 2d 352, one of the cases noted above, was an appeal to the Supreme Court of Washington from the decision of the Superior Court of Lewis County dismissing a suit filed by one Arthur A. Kaul, a taxpayer and registered voter who had lived in Chehalis for fourteen years and had used water from the City's water system and paid for it, seeking to enjoin the City from fluoridating the water supply. The appeal resulted in a five-to-four

decision of the Supreme Court of Washington affirming dismissal.

It will be apparent from a reading of the majority decision in the *Kaul* case that no claim was made by the appellant that fluoridation would affect the wholesomeness of the water supply, and it was assumed without argument that addition of fluoride to the Chehalis water supply would actually prevent tooth decay. No evidence of harm was before the Court in the uncontested findings of fact it considered. It is interesting to note, however, that the majority opinion does state the following (page 353):

> "If the water is fluoridated, it will be necessary for appellant and all other users 'to use it for domestic purposes including drinking, because there is no other practical source of supply.' "

This is the precise situation presented in the case at bar, where petitioners have no practical source of water supply other than that furnished by the City of Chicago.

In the *Kaul* case, despite the factual situation noted vigorous dissenting opinions were filed and petitioners feel that, because the lower Court decision was affirmed by only five of the nine distinguished Justices composing the Supreme Court of Washington, what was said in the dissenting opinions becomes important and may properly be considered by this Honorable Court.

The dissenting opinion by Mr. Justice Matthew W. Hill contains the following, at page 358:

> "We are not here concerned with any question as to appellant's right to be furnished wholesome water, or with any other rights which he might have in connection with the city's duty to furnish water. *The significant circumstances are that the ordinance is designed solely for the purpose of effecting the application of fluorine to the teeth of the residents of Chehalis*

in order to minimize tooth decay in some children. The use of the city water system as a means of accomplishing this purpose means that the aforesaid 'treatment' becomes compulsory for any person who has to rely upon the city water supply as his source of drinking water. *Thus the liberty of which appellant is deprived is the right to decide of his own free will whether he desires to apply fluorine to his teeth for the purpose of preventing tooth decay, based upon his own opinion as to whether it would be advantageous or disadvantageous to his personal health—a matter, incidentally, on which there is marked and bitter divergence of opinion within the medical and dental professions.*

"It must be conceded that this is a personal liberty which falls within the constitutional protection of due process." (Emphasis added.)

The Fourteenth Amendment to the United States Constitution extends and makes important rights guaranteed by the Constitution applicable to the States. The pertinent portion reads as follows:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any State deprive any person of life, liberty, or property, without due process of law;* nor deny to any person within its jurisdiction the equal protection of the laws." (Emphasis added.)

Fluoridation of the Chicago water supply infringes and violates the rights guaranteed to petitioners by the Fourteenth Amendment. Petitioners respectfully submit that the decision herein of the Illinois Supreme Court permitting the City of Chicago to force them, against their will, to submit to fluoridation of their water, and to the compulsory medication thereby involved, was grossly erroneous, and the writ of certiorari here sought should be granted by this Court that said decision may be reviewed and ultimately reversed.

III.

THE CITY OF CHICAGO HAS VIOLATED ITS POLICE POWERS BY ADMINISTERING FLUORIDE TO THEM AGAINST THEIR WILL, WHEN SUCH MEASURES ARE NOT NECESSITATED BY PRESSURE OF GREAT PUBLIC DANGERS OR REQUIREMENTS OF PUBLIC SAFETY, AND CERTAIN PERSONS CAN ACTUALLY BE HARMED BY FLUORIDATION.

The City Council of the City of Chicago grossly exceeded its police power when it directed that the water used for drinking purposes by the citizens of Chicago should be fluoridated, in effect prescribing an indeterminate dosage of fluoride for every man, woman, and child. It is, of course, admitted that the police power of the City is very broad, but petitioners respectfully submit that it must be exercised in such a manner as not to violate any of the constitutional rights guaranteed to them by the Constitutions of the State of Illinois and the United States. Subjecting the citizens to mass medication by forcing them against their will to drink fluoridated water violates the due process of law guaranteed by the Fourteenth Amendment to the United States Constitution and Section 2 of Article II of the Illinois Constitution.

Petitioners recognize that the said rights guaranteed to them must on occasion, when warranted by circumstances, give way to acts performed by the municipality for the protection of the population as a whole, as, for example, when there is an epidemic of contagious disease, or such an epidemic is threatened. But there is nothing about fluoridation that justifies a deprivation of such rights, "dental caries", or tooth decay, not being an infectious or contagious disease, necessitating protection of the population from a possible epidemic.

In this regard, the City Code of Chicago has clearly defined the limits of the City's police powers. Section 9-18 of said City Code provides that the Chicago Board of Health shall not have power to compel submission by anyone to medication "*except when there shall be an epidemic of a disease, or an epidemic is or appears to be imminent.*" (Emphasis added.)

Jacobsen Case

The Illinois Supreme Court decision herein cited the case of *Jacobsen* v. *Massachusetts*, 197 U. S. 1, 25 S. Ct. 358, 49 L. Ed. 643, as authority for sanctioning fluoridation. In the *Jacobsen* case this Court upheld compulsory vaccination to prevent spread of communicable disease. It was there stated:

> "There is, of course, a sphere in which the individual may assert the supremacy of his own will and rightfully dispute the authority of any human government, especially of any free government existing under a written constitution, to interfere with the exercise of that will. But it is equally true that in every well-ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of his liberty may at times, *under the pressure of great dangers* be subjected to such restraint, to be enforced by reasonable regulations, *as the safety of the general public may demand.*" (Emphasis supplied.)

There is not one iota of evidence herein to show that fluoridation of the Chicago water supply is necessary because of the "pressure of great dangers", or to safeguard the "general public" from harm.

Regarding this matter the following in Mr. Justice Hill's dissent in *Kaul* v. *City of Chehalis* is of particular interest (page 361):

"If fluorine is indeed the key to dental health and the application of fluorides is readily available to all who desire it, then education and persuasion, not compulsion, seem to be called for. Compulsion is justified on occasion for the protection of the public when dealing with contagious disease, but when we search for the 'pressure of great dangers' in the instant case, it simply is not there. The ordinance providing for fluoridation is unconstitutional on the ground that it is an unwarranted and unjustified invasion of the liberty guaranteed the appellant by the United States constitution, amendment 14, and by our state constitution, Art. I § 3."

Lawton v. Steele

The decision of the Illinois Supreme Court herein also cited the case of *Lawton* v. *Steele*, 152 U. S. 133, 14 S. Ct. 499, 38 L. Ed. 385, as authority for sanctioning fluoridation. The seizure and destruction of fishing nets, pursuant to a statute of the State of New York, was involved in that case. The opinion contains the following with regard to the "police power" of a State or municipality (Page 136):

"The extent and limits of what is known as the police power have been a fruitful subject of discussion in the appellate courts of nearly every State in the Union. It is universally conceded to include everything *essential to the public safety, health, and morals*, and to justify the destruction or abatement, by summary proceedings, of whatever may be regarded as a public nuisance."

The opinion then goes on to mention quite a number of acts that may be committed by a State under this "police power", and the opinion contains the following (Page 137):

"To justify the State in thus interposing its authority in behalf of the public, it *must appear* first, that

> the interests of a *public generally*, as distinguished from those of a particular class, *require such interference;* and, second, that *the means are reasonably necessary* for the accomplishment of the purpose, . . ." (Emphasis added.)

In the case at bar, it cannot be truthfully said that fluoridation of the water supply is required in the interests of the "public generally", for as clearly appears from the record, only children from 6 to 12 years of age are even claimed to be benefitted by it. Wherein in this cause could it be claimed that fluoridation is "essential to the public safety, health, and morals"? The evidence actually adduced would indicate, on the contrary, that *enjoining of fluoridation* is the step most necessary for protection of public safety and health! And wherein, in view of the many alternative methods of administering fluorides, could it be claimed that the mass method adopted by the Chicago City Council meets the *Lawton* case requirement necessitating that the "means are reasonably necessary for accomplishment of the purpose"?

This opinion of the Court, then, may properly be cited in support of the prayer of petitioners in the case at bar.

Some Children Are Bound to be Harmed

It was claimed herein by the City that fluoridation of the Chicago water supply is a proper exercise of its police powers, being rendered necessary for *protection* of public health through reduction of dental decay. Petitioners respectfully submit that such an exercise of the City's police powers could not be possibly justified, proper, or legal if *even one* person in Chicago could be harmed through fluoridation.

It is a matter of common knowledge that where the dosage of fluoride administered to the child is largely dependent upon his or her thirst and consumption of water, and is not predicated upon a measured dose directed to the child's alleged needs and requirements, some children are bound to consume too much fluoride. When this situation occurs, the child becomes afflicted with a condition known as "chronic endemic dental fluorosis", or "mottled enamel".

The American Illustrated Medical Dictionary (21st edition) defines "mottled enamel" as follows (T1304):

> "A chronic endemic dental fluorosis that is found in communities using a drinking water that contains one part or more of fluorine per million. The permanent teeth of children so raised tend to erupt more or less chalky white in color, and later tend to become pitted and stained yellow, brown or almost black. Called also chronic endemic fluorosis."

Respondents attempted to minimize the seriousness of dental fluorosis, or mottled enamel, by claiming that incidence of the disease would probably not be "severe", or "disfiguring", that mottled enamel merely is a "cosmetic effect" of no consequence, and that an "expert" is required to detect it.

Actually mottled teeth are readily visible to the eye, and it certainly does not require an "expert" to detect the destructive effects involved.

Various degrees of mottled enamel are portrayed in the plates appearing herein as Plaintiffs' Exhibits 58 and 71, respectively (the same also being reproduced in the appendix to the abstract herein).

The unrefuted and undeniable evidence adduced in this cause *from the City's own witnesses* demonstrates that many children will contract this fluoride-caused disease.

Dr. H. Trendly Dean, "father of modern fluoridation", was one of the witnesses who testified for the City. Various surveys had been conducted by Dr. Dean for the U. S. Public Health Service to determine the incidence of chronic endemic dental fluorosis in naturally-fluoridated communities. Dr. Dean's testimony concerning these studies revealed:

In Marion, Ohio, 6% of the children examined had definite cases of chronic endemic dental fluorosis, and an additional 36% came under the "questionable" or "borderline" category, the fluoride content of the water supply being about 40% of what Chicago aims to maintain in its water. (Abst. 418)

In Clarksville, Tennessee, there was an incidence of 8.3% fluorosis, its water supply containing .2 of a part per million, or one-fifth the fluoride content which is the object of the Chicago fluoridation program. (Abst. 428.)

In Vicksburg, Mississippi, there was an incidence of 11% fluorosis, with .2 of a part per million in its water. (Abst. 428.)

In Aurora, Illinois, there was an incidence of 15% fluorosis. with 1.2 parts per million fluoride in its water. (Abst. 428.) (Note: The fluoride content of Chicago water has ranged as high as 1.35 parts per million since commencement of fluoridation.)

In Colorado Springs, Colorado, a city with naturally-fluoridated water containing only 2.5 parts per million of fluoride, there was a 73.8% prevalence of dental fluorosis among the children of that community. (T2054, Abst. 428)

Dr. Dean's studies revealed that in Kewanee, Illinois (.9 of a part per million), 35% of the children examined were

"borderline", or "questionable" cases, and *12.2%* had definite fluorosis. (Ab. 426)

The effect of fluoride upon the children of Chicago would obviously be the same as upon those residing in Kewanee, for example. Therefore, *using Dr. Dean's own statistics,* approximately *one in every eight* children affected by Chicago fluoridation will contract *definite fluorosis,* and an additional *35%* will fall in the "questionable" category, a total of *432,944 children* in both categories.

Petitioners submit that if *only one child* in the City of Chicago contracts chronic endemic dental fluorosis as a result of fluoridation, the misfortune thus occurring constitutes a gross and unwarranted invasion of that child's legal and Constitutional rights.

Petitioners regret that space herein precludes review of the evidence rendered herein by such pre-eminent experts as Dr. Frederick B. Exner, Dr. George Waldbott, Dr. J. H. Mick, Dr. Melvin Page, and others called by respondents, which outlines other harmful effects which can result from administration of uncertain and indiscriminate amounts of fluoride to a whole population. This evidence again is amply *corroborated* and *confirmed* by testimony adduced from the City's own witnesses.

Respondents submit, however, that what is hereinabove set forth should more than suffice to demonstrate that no pressure of great dangers or requirements of public safety necessitate administering fluoride to everyone in the City of Chicago, that many persons will in fact be harmed thereby, and that the City of Chicago has grossly violated its police powers in adopting such measures.

CONCLUSION.

For the foregoing reasons, petitioners respectfully request that this Honorable Court grant and issue its writ of Certiorari herein.

Respectfully submitted,

ALBERT W. DILLING
KIRKPATRICK W. DILLING
188 West Randolph Street
Chicago 1, Illinois
Telephone: Central 6-8417
Attorneys for Petitioners.

APPENDIX "A"

Opinion of Mr. Justice Joseph E. Daily of the Supreme Court of Illinois, dated March 18, 1964, affirming the judgment of the lower Court.

Docket No. 37592 Alice Schuringa *et al.*, Appellants, v. The City of Chicago *et al.*, Appellees.

Mr. Justice Daily delivered the opinion of the court:

This suit, brought in the superior court of Cook County against the city of Chicago and certain of its officials, is a taxpayers' action to enjoin defendants from fluoridating the city's water supply. Because constitutional questions are involved, plaintiffs appeal directly to this court for review of a decree dimissing their complaint for want of equity. Upon leave granted, the Chicago Dental Society has filed a brief as *amicus curiae* in support of the decree.

The events leading to the action had their beginning on October 31, 1951, when a special committee of the city council was appointed to study water fluoridation from the point of view of public health. Public hearings were held as the result of which the committee concluded that fluoridation of water served to prevent dental caries, or tooth decay, and that it was in no way physically harmful, and recommended that fluorides be introduced into the city's water supply. Upon the basis of such study and recommendation, as well as an opinion of the corporation counsel that a fluoridation program would not violate constitutional or other legal rights, the council passed a resolution on June 16, 1954, declaring the fluoridation of the water supply to be in the interest of the public health and further providing, in part: "* * * that steps for the introduction of

fluoride in a concentration adequate for safety and in accordance with the regulations prescribed by the Illinois Department of Health be undertaken by the City of Chicago through its Department of Water and Sewers with the cooperation of the Chicago Board of Health by January 1, 1955." Thereafter, the program and its manner of execution and administration were approved by the Illinois Department of Health and it was set into operation on May 1, 1956.

It appears that the city water supply, taken from Lake Michigan, has a natural fluoride content ranging from approximately .04 to .15 parts to a million parts of water. Under the program fluoride is added at strategic control points in quantities sufficient to maintain in the entire city system an optimum fluoride level of 1.0 part per million parts of water. There is no question but that the city uses the most advanced, safe and sanitary methods to inject the fluoride into the supply, and it also appears that constant tests to determine fluoride content are performed both by the city and the State.

Shortly after the program went into effect, the plaintiffs, suing as taxpayers and users of the city's water system, brought this suit for injunctive relief. One plaintiff is a dentist in general practice, two are housewives and the fourth, Walter Olson, is a practicing member of a religious sect which rejects the use of material medicine and relies upon spiritual means alone for healing disease. The cause was referred to a master in chancery to hear the evidence. After prolonged hearings and upon consideration of a voluminous record, the master made three basic findings of fact: (1) that fluoridation reduces dental caries by sixty per cent in children up to fourteen years of age; (2) that

fluoridation of one part per million parts of water will not cause mottled teeth; and (3) that fluoridation to such extent will not cause systemic physical harm to the population as a whole. On the basis of such findings, as well as his conclusions that no legal rights were violated, the master recommended that plaintiffs' complaint be dismissed for want of equity. After exceptions to the master's report had been considered and overruled, such a decree was entered. This appeal has followed.

Essentially, plaintiffs' contentions are that the master's findings of fact are either unsupported by the evidence or against the manifest weight thereof, that the legislative action in question is an unreasonable, arbitrary and unwarranted exercise of the police power, and that it infringes upon fundamental liberties protected by constitutional guarantees of due process of law. As to the plaintiff Olson it was contended below and in the brief filed in this court, that the fluoridation program was compulsory medication which violated the right to religious freedom guaranteed him by the first and fourteenth amendments to the Federal constitution. However, the latter issue, no stranger to the halls of justice in the setting here raised, (See: *Dowell* v. *City of Tulsa*, (Okla. 1954,) 273 P.2d 856, 864, *certiorari* denied 348 U.S. 912, 99 L. ed. 715; *Readey* v. *St. Louis County Water Co.* (Mo. 1961,) 352 S.W.2d 622, 628,) has become moot and is no longer an issue in the appeal, under the circumstance that the plaintiff Olson has voluntarily withdrawn and obtained a dismissal of the appeal as it relates to him. It is axiomatic that this court, unless the public interest demands it, will not consider abstract or moot questions, (*cf. People ex rel. Lawrence* v. *Village of Oak Park*, 356 Ill. 154; *National Jockey Club* v. *Illinois Racing Com.*

364 Ill. 630,) and, moreover, the remaining plaintiffs are not injuriously affected by the operation of the legislation on such ground. *Cf. Klein* v. *Dept. of Registration and Education*, 412 Ill. 75, 87; *City of Chicago* v. *Rhine*, 363 Ill. 619, 626.

The police power of the State is a basic attribute of sovereignty which exists without any special grant or reservation in the constitution, (*Chicago Junction Railway Co.* v. *Illinois Commerce Com.* 412 Ill. 579; *Berry* v. *City of Chicago*, 320 Ill. 536,) and we may begin our consideration of the issues here raised with the statement of two elementary and undeniable principles. First, that the police power may be validly exercised in order to protect the public health, (*City of West Frankfurt* v. *Fullop*, 6 Ill.2d 609; *People ex rel. Kerner* v. *Huls*, 355 Ill. 412,) and that the State of Illinois, as it may lawfully do, has delegated to its municipalities the police power to protect the public health both generally, (Ill. Rev. Stat. 1963, chap. 24, par. 11—20—5,) and specifically with respect to water systems. (Ill. Rev. Stat. 1963, chap. 24, par. 11—139—8 (2); see also: *Gundling* v. *City of Chicago*, 176 Ill. 340.) Equally settled and certain is the concept that a police measure, to be beyond the pale of constitutional infirmity, must bear a reasonable relation to the public health or other purpose sought to be served, the means being reasonably necessary and suitable for the accomplishment of such purpose, (*Strub* v. *Village of Deerfield*, 19 Ill.2d 401; *Vissering Mercantile Co.* v. *Annunzio*, 1 Ill.2d 108; *Lawton* v. *Steele*, 152 U.S. 133, 38 L. ed. 385,) and the principle that courts will not interfere with legislation falling within the orbit of a municipality's police power unless there is a palpably arbitrary or unfair exercise of the power. (*City of Chicago* v. *R. & X. Restaurant*, 369 Ill. 65; *Chicago Cosmetic Co.* v.

City of Chicago, 374 Ill. 384. The first issues thus confronting us are whether the fluoridation of water is so related to the public health as to constitute it a proper exercise of the police power, and whether fluoridation is reasonably necessary and suitable for the protection of the public health.

And while the matter is one of first impression in this jurisdiction, it is a question which has been the subject of much litigation in our time In this country, on the occasions where the matter has been subjected to judicial scrutiny, there has been unanimous accord that the fluoridation of water by one part of fluoride to a million parts of water is a reasonable and proper exercise of the police power in the interest of the public health, and that it is not subject to constitutional infirmities thus far conceived. (See: *Chapman* v. *City of Shreveport,* 225 La. 859, 74 So. 2d 142, *certiorari* denied 348 U.S. 892, 99 L. ed. 701; *Kraus* v. *City of Cleveland,* 163 Ohio St. 559, 127 N.E.2d 609, *certiorari* denied 351 U.S. 935, 100 L. ed. 1463; *Dowell* v. *City of Tulsa,* (Okla. 1954,) 273 P.2d 859, *certiorari* denied 348 U.S. 912, 99 L. ed. 715; *de Aryan* v. *Butler,* 119 Cal. App. 2d 674, 260 P.2d 98, *certiorari denied* 347 U.S. 1012, 98 L. ed. 1135; *Froncek* v. *City of Milwaukee,* 269 Wis. 276, 69 N.W.2d 242; *Readey* v. *St. Louis County Water Co.* (Mo. 1961,) 352 S.W.2d 622; *Baer* v. *City of Bend,* 206 Ore. 221, 292 P.2d 134; *Kaul* v. *City of Chehalis,* 45 Wash. 2d 616, 277 P.2d 352; *City of Fort Pierce* v. *State ex rel. Altenhoff,* (Fla. 1962,) 143 So. 2d 879. *Cf. Wilson* v. *City of Council Bluffs,* (253 Ia. 162,) 110 N.W.2d 569.) On the other hand, we are told in plaintiffs' brief that the highest courts of Canada and Sweden have ruled against fluoridation, the former apparently concluding that such a program was beyond the statutory author-

ity of municipalities, (*Municipality of Metropolitan Toronto* v. *Village of Forest Hill*, (1957) 9 D.L.R.2d 113,) and the latter apparently concluding, among other things, that there were possibilities of risk and disadvantage to health. (*Association for Promotion of Health* v. *Town of Norrkopping*, (Sweden, 1961.) The High Court of Dublin, Ireland, to the contrary, shares the American view to date that fluoridation of public waters is neither physically harmful nor legally improper. *Ryan* v. *Attorney General*, (1963.)

On approaching the factual issue of whether the fluoridation of drinking water by one part per million is reasonably related to and suitable for the protection of the public health, it may be said to be uncontradicted that dental caries, or tooth decay, presents a continuing and unsolved problem of general health on a national scale, and that it is a disease from which no community, level of society or age group is immune. Fluorides, in varying proportions, exist naturally in the water supplies of many areas and at a time in history we take to be around the early 1930's, it was discovered that dental experience was significantly different in such areas. Generally speaking, those differences were a lower percentage of tooth decay, and in some areas, an incidence of mottled teeth, or chronic endemic fluorosis. The result of these discoveries was extensive scientific study, research, testing and experimentation which ultimately laid the basis for the program of artificially fluoridating public drinking waters.

Reduced to their simplest terms, the general scientific conclusions reached were: that the ingestion of fluoridated waters results in a hardening of tooth enamel which makes for greater resistance to tooth decay; that the beneficial

effects develop in the human body from birth through the ages of 12 to 14 years, being the period when the dentine and enamel of permanent teeth are being formed; that the protection acquired in the formative stages carries over into adult life; that the ingestion of fluorides in moderate amounts has no harmful effects on the human body; and that seriously mottled teeth occur only where excessive amounts of fluorides are ingested. Based upon these findings, and with the endorsement of various scientists, dental associations, health and medical groups, and governmental agencies, (*e.g.* the United States Department of Health and in our own jurisdiction the Illinois Department of Health,) many cities starting in the early 1950's, began fluoridating public water supplies as a health measure.

As could be expected, however, artificial fluoridation has not been entirely free from sincere and conscientious objection on the part of some scientific and medical men, and proposals to pursue such a program have been expressly rejected in some communities. In the present case plaintiffs introduced evidence, largely through the medium of expert opinion, to the effect that the ingestion of fluorides has no appreciable effect upon the reduction of dental caries, or at least a doubtful and as yet undetermined effect; that it merely delays and postpones tooth decay rather than preventing it; and that the whole problem of tooth decay, as well as its solution, is a matter of diet and nutrition in which fluorides are neither necessary nor a factor. Defendants' expert witnesses, for the most part men with long and extensive experience in the actual research and testing which has gone into the scientific effort to determine the relationship between the fluoride content of water and dental caries, testified exactly to the contrary. According

to their opinions fluoridation has and does result in a direct reduction of dental caries among children, and by fluoridating Chicago's water supply at a level of one part per million decay will be reduced in the permanent teeth of children by as much as 50 to 60% after a period of 10 years.

Fluoride is a toxic substance, which is not an essential element of the human body, and when introduced into the system by whatever means is in part absorbed and accumulated in bones and body tissues, as well as in the teeth. While conceding that the susceptibilities of the particular individual and the amounts of fluoride involved are factors, plaintiffs' experts were of the opinion that one of the long range effects of fluoridating public drinking water could be the development of chronic fluoride poisoning in a substantial number of citizens. Such a condition, they stated, would interfere with certain natural body processes as its primary effect, and as possible secondary effects could cause nausea, vomiting, constipation, diarrhea, changes in the hair, skin and nails, skin eruptions, abnormal bones and kidney stones. Additionally, they testified that damage would result to the kidneys, liver and other vital organs; that the nervous system would be directly and harmfully affected; that the spine would be affected; that loss of muscle power and altered reflexes would occur; and that the poisoning would interfere with reproduction, decrease fertility, decrease the mother's milk supply, increase still births and stunt growth. They classified diabetics, people susceptible to allergies, arthritics and women during pregnancy and menstrual periods as groups particularly sensitive to any intake of fluoride. One of the plaintiffs, a practicing dentist who examined only 16 to 18 young patients a year, testified that since the commencement of fluoridation of water in Chicago he had observed gum

damage in the mouths of children. This was flatly contradicted by witnesses for defendants who examine thousands of children each year.

Based upon tests with animals, upon statistics relative to fluoride poisoning, upon tests and studies of the retention and excretion rate of fluoride in the human body, upon medical experience and upon a series of autopsies performed upon bodies of persons living where the water supply had a natural fluoride content of 2.5 parts per million parts of water, defendants' experts testified in essence that the lifetime consumption of water fluoridated by one part per million would have no harmful or adverse effects upon the human body, and were of the opinion that water fluoridated to such an extent could be safely ingested without cumulative toxic effect. More specifically, one defense witness testified that the ingestion of fluoride in such quantity and in such manner could not possibly have harmful effects upon bones, the kidneys, the heart or tissues of the body. According to another witness, only a small fraction of fluorides ingested is retained in the body, the greater portion being excreted naturally through the kidneys and sweat glands, and whenever the concentration of fluoride in the blood tends to rise the mechanisms which carry fluoride out of the blood also tend to increase their activity and to maintain a balance, unless overwhelmed by the sudden intake of large amounts of fluoride. In this connection, the witness stated that for the ingestion of fluorides to become dangerous a person would have to ingest at one time in the neighborhood of 1000 to 2000 times the amount that he could normally ingest in a day by drinking water fluoridated by one part per million.

On the subject of retention by the human body, a witness for plaintiffs testified there are variations from indi-

vidual to individual, some retaining more than others, and it was his opinion that children who would retain the whole intake of fluoride from Chicago's water would be susceptible to ill effects as time progressed. Over defendants' objection, the same witness was permitted to testify to an uncompleted experiment he was conducting by injecting fluoride in a concentration of 6.8 parts per million, (far in excess of the optimum level maintained by Chicago,) into a group of 30 persons, 20 of whom were already afflicted with fluorosis and 10 of whom were "not suspected of fluorosis." According to his preliminary findings and report, the persons suffering from fluorosis excreted an average of 25.6% of the fluoride administered, while the others eliminated an average of 57.1%.

There was a similar division of evidence and opinion on the issue of whether fluoridation by one part per million would result in widespread chronic endemic fluorosis, or mottled enamel. This condition, which has its beginning from the effect of fluoride on the enamel-forming cells of the tooth bud, does not affect the tooth structurally or functionally but presents largely a problem of cosmetics or esthetics. Its incidence follows no fixed pattern, individual differences and other variables again apparently playing a part, and it may range from mild to severe cases and varying degrees in between. In its mildest form, detectable only by the trained eye, the tooth appears bleached or chalky white in its entirety or in spots. Later, in the progression to a severe case, the enamel tends to become pitted and stained yellow, brown or almost black. Also, it appears that, for the most part, the condition ordinarily occurs on surfaces which are not apparent from outside the mouth.

Generally, it was the testimony of defendants' experts that in order for mottled teeth to occur the intake of fluoride

would have to be excessive, one witness stating the concentration would have to be above three parts per million; that no disfiguring or severe mottling would occur where there was a concentration of only one part per million; that instances of dental fluorosis had been few and far between in Chicago and other communities having a comparable program; and that a mottled tooth was preferable to a decayed tooth from the point of view of general body health. For the plaintiffs, an expert testified that 17% of the children drinking artificially fluoridated water from birth until they are old enough to have permanently erupted teeth will show some degree of mottled enamel, and a showing was made of statistical studies revealing the incidence of mottling, or suspected mottling, in communities where the natural fluoride content of their water supplies ranged from .2 to 1.2 parts per million parts of water. The statistician, however, who happened to be one of the expert witnesses for defendant, classified the cases of mottling as "mild" or "very mild" and, while we entertain some doubt as to the validity or consistency of his conclusion, testified in this cause that the statistical experience of other communities in this respect could not be projected to the city of Chicago.

We do not agree that the master's findings of fact are either against the manifest weight of the evidence, or in some intances without evidentiary support, as plaintiffs contend. A presumption of validity attaches to municipal enactments and regulations adopted under the police power and the burden of proving to the contrary is upon him who asserts the invalidity. (*Kieg Stevens Baking Co.* v. *City of Savanna*, 380 Ill. 303; *Stearns* v. *City of Chicago*, 368 Ill. 112.) And while, as we have noted, such legislative action is generally subject to judicial review to determine

whether it is related to and reasonably necessary and suitable for the protection of the public health, safety, welfare or morals, courts will not disturb a police regulation where there is room for a difference of opinion, but in such case the legislative judgment will prevail. (*McCray* v. *City of Chicago,* 292 Ill. 60; *Dunlap* v. *City of Woodstock,* 405 Ill. 410.) Furthermore, the wisdom, necessity and expediency of police regulations are no concern of the courts, but are matters primarily for the legislative body of the municipality, and courts are without power to interfere merely because they believe a different regulation might have been wiser or better. *City of Chicago* v. *Waters,* 363 Ill. 125; *Chicago Cosmetic Co.* v. *City of Chicago,* 374 Ill. 384.

From all of the evidence in this record, as well as the scientific, professional and legal authorities which have been brought before us, there appears to be extraordinary accord that fluorides act to prevent and reduce tooth decay, and that artificial fluoridation to the extent of one part per million parts of water will not, either presently or cumulatively, result in harmful systemic effects. Apart from the extensive scientific research which led to these conclusions, equally impressive are the painstaking legislative inquiries at Federal, State and local levels which have preceded the endorsement and adoption of fluoridation programs. As we see it, the closest factual issue arises over the question whether artificial fluoridation, to the extent here involved, will in fact produce what could be described as harmful effects in the matter of mottled teeth. At best, however, the evidence with respect thereto presents only a debatable question where there is room for difference of opinion, and while it is our belief the proof is more susceptible to a conclusion that severe and disfiguring endemic dental fluorosis will not result from artificial

fluoridation to the extent practiced here, it is enough to say it is an area in which the legislative judgment must prevail. We conclude that the artificial fluoridation of water is reasonably related to the public health, and that the program adopted by Chicago is necessary and suitable for the protection of public health.

Departing from considerations directly related to bodily health, plaintiffs also contend that the Chicago program is arbitrary and unreasonable because it is wasteful and because it is being administered in a "haphazard" manner. We do not find that either point is well taken. The claim of haphazard administration is founded upon charts of daily tests which show that the fluoride content does not at all times measure at precisely one part per million parts of water, but fluctuates in varying degrees slightly above or slightly below that figure. However, further proof shows that the absolute perfection for which plaintiffs contend is not possible to achieve, that the city tries and usually does maintain the proportion of fluoride so there will be .95 parts per million parts of water, and that the amounts of fluoride ingested in those instances where the content slightly exceeds one part per million will not have present or cumulative harmful effects. We would add, too, it appears that the methods, tests and controls being employed to insure safety meet the highest standards.

The claim of a wasteful program arises from the fact that the program has had a capital outlay of roughly $500,000 and operational costs of about $350,000 a year, and from the circumstances that Chicago has but one system of pipes to distribute its water supply with the result that only a small fraction of the total fluoridated supply is actually ingested by the 6 to 14 age group it is intended to benefit. This, the plaintiffs urge, is a needless waste of public funds particularly in view of the alternate meth-

ods by which fluorides could be administered to children, as for example: by topical application, by pills dissolved in water, and by the use of fluoridated milk, mouthwash or toothpaste. There is, however, proof in the record that such alternative methods would not be as safe, economical and effective as the fluoridated water program, that they would not effectively accomplish the widespread public purpose of the program, that the only practical method of employing the beneficial effects of fluoride is by treating drinking water, and that the public expense and apparent waste of a part of the fluoridated water supply is more than offset by the beneficial results to be attained. Taking into account all of the circumstances, particularly the purpose of benefitting the entire population, we cannot say that the program is unreasonable or arbitrary on such ground. *Cf. Readey* v. *St. Louis County Water Co.* (Mo. 1961,) 352 S.W.2d 622, 632; *Kraus* v. *City of Cleveland*, 163 Ohio St. 559, 127 N.E.2d 609, 612.

Finally, plaintiffs assert that the program is an improper exercise of the police power because tooth decay is not a communicable or epidemic disease; because only a small segment of the population, the city's children, are benefited; and because it subjects all users to mass medication in violation of the fundamental and inalienable right of each individual to determine whether or not they wish to be so treated. These constitutional claims have both their source and their unanimous rejection in the decisions of our sister States, heretofore cited, which have treated upon the problem and we see no useful purpose in a detailed analysis or repetition of the grounds for rejection. Suffice it to say that those well-reasoned precedents, with which we are in accord: (1) sustain the right of municipalities to adopt reasonable measures to improve or protect the public health, even though communicable or epidemic dis-

cases are not involved: (2) hold that the benefits of fluoridation which carry over into adulthood absolve such programs of the charge of being class legislation; and (3) conclude that fluoridation programs, even if considered to be medication in the true sense of the word, are so necessarily and reasonably related to the common good that the rights of the individual must give way. *Cf. Jacobson* v. *Commonwealth of Massachusetts,* 197 U.S. 11, 49 L. ed. 643.

Two collateral issues remain to be considered. First, the contention of plaintiffs that the exercise of the police power here is invalid because it was accomplished by resolution rather than by ordinance; and second, the contention of defendants on cross appeal that the trial court erred in apportioning half of the master's fees and charges to the city of Chicago. We do not find, however, that the first issue was ever raised or passed upon in the trial court, with the result that it is not properly before us for review and will not be considered. (*Pickus* v. *Board of Education,* 9 Ill.2d 599; *Zehender & Factor, Inc.* v. *Murphy,* 386 Ill. 258.) As to the second, it is axiomatic that the assessment and apportionment of fees and costs rest in the sound discretion of the trial court. (*McFail* v. *Braden,* 19 Ill.2d 108; *Jones* v. *Felix,* 372 Ill. 262,) and we perceive no abuse of discretion in this case. While the judicial view of artificial fluoridation has since become crystallized and fixed along discernible lines, the complaint filed in this proceeding, which has been unduly prolonged, reflects generally upon a time when the constitutionality of such programs was uncertain and when the bona fides of plaintiffs' action could not seriously be contested.

The decree of the superior court of Cook County was correct and is therefore affirmed.

Decree affirmed.

APPENDIX "B"

PETITION OF JOSE M. LENONE FOR LEAVE TO INTERVENE AS A PLAINTIFF-APPELLANT IN THE ABOVE-ENTITLED CAUSE, DATED JANUARY 10, 1964, WITH SUPPORTING AFFIDAVIT

Jose M. Lenone, by Albert W. Dilling and Kirkpatrick W. Dilling, his attorneys, hereby petitions this Honorable Court for leave to intervene as a Plaintiff-Appellant in the above-entitled cause and states to the Court the following:

This petition (or application) is being filed pursuant to Section 26.1 of the Civil Practice Act of the State of Illinois (Chapter 110, Illinois Revised Statutes), entitled "Intervention", the applicable portions of which are as follows:

> "(1) Upon timely application anyone shall be permitted as of right to intervene in an action: " . . . (b) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant will or may be bound by a judgment, decree or order in the action. . . . "
>
> "(5) A person desiring to intervene shall present a petition setting forth the grounds for intervention, accompanied by the initial pleading or motion which he proposes to file. . . .
>
> "(6) An intervenor shall have all the rights of an original party, except that the court may in its order allowing intervention, whether discretionary or a matter of right, provide that the applicant shall be bound by orders, judgments or decrees theretofore entered or by evidence theretofore received, that the applicant

shall not raise issues which might more properly have been raised at an earlier stage of the proceeding, that the applicant shall not raise new issues or add new parties, or that in other respects the applicant shall not interfere with the control of the litigation, as justice and the avoidance of undue delay may require."

Attached hereto and made a part hereof is an affidavit in support of said petition.

Since your petitioner, if permitted to intervene herein, will stand upon the record in this cause as it now is, he does not attach hereto any proposed pleading or motion, this petition setting forth all matters sought by him to be presented to the Court.

Petitioner respectfully prays that this Court may grant him leave to intervene as a plaintiff-appellant in the above-entitled cause.

AFFIDAVIT OF JOSE M. LENONE IN SUPPORT OF PETITION FOR LEAVE TO INTERVENE

Jose M. Lenone, being first duly sworn, on oath deposes and says:

1. He is a retired Lieutenant Colonel in the United States Army Reserve.

2. He has been a resident of the City of Chicago since 1911 and presently resides in the Bryson Hotel, 4932 Lake Park Avenue, Chicago.

3. He is, and since 1913 has been, a member of The First Church of Christ, Scientist, Boston, Massachusetts, the so-called "Mother Church".

4. He is, and since 1914 has been, also a member of the Fifth Church of Christ, Scientist, Chicago, Illinois,

which meets at 4840 Dorchester Avenue, Chicago, and has been the President of the Board of Directors of the said Fifth Church and is also its Treasurer.

5. As a member of the Christian Science Church, he is, and all along has been, opposed to fluoridation of the public water supply of the City of Chicago.

6. He believes in and subscribes to the tenets, beliefs, and doctrine of the Christian Science Church. As to these tenets, Plaintiff-Appellant Walter Olson testified in this cause:

> "The doctrine of the Christian Science Church denies the beneficial effect of material remedies and teaches sole reliance on the power of God. The Church is affirmatively opposed to material medicine as to its members."

7. Petitioner has at all times exactly subscribed to said tenets, beliefs, and doctrine.

8. He is opposed to the use of medication of any kind and objects to mass medication through the addition of a fluoride to his drinking water.

9. The public water supply of the City of Chicago is the only public and practicable water supply available to him.

10. He therefore drinks fluoridated water under compulsion in spite of his strong religious objections thereto.

11. He states that fluoridation of his water supply is a gross violation of the religious liberty guaranteed to him by the First Amendment to the Constitution of the United States, and Section 3 of Article II of the Illinois Constitution.

12. As the record in this cause discloses, Walter Olson, one of the plaintiffs-appellants in this cause (now deceased), was also a member of the Christian Science faith, and being opposed to fluoridation of the Chicago water supply because of the fact that it violated the religious beliefs and rights of said faith, and the religious freedom of its members, guaranteed to them by the First Amendment of the U. S. Constitution, and Section 3 of Article II of the Illinois Constitution.

13. A holding in this cause that fluoridation of the Chicago water supply violated the Constitutional religious liberties and rights of Christian Scientists, including Walter Olson, would have constituted an adjudication and ruling in favor of petitioner and others of his faith, protecting him and all others similarly situated from further violation of religious liberties and freedoms as caused by fluoridation of the Chicago water supply.

14. The stand and position taken by Walter Olson herein was precisely representative of the stand and position heretofore held, and now held, by your petitioner with respect to fluoridation of the Chicago water supply, and particularly with regard to petitioner's religious Christian Science beliefs and rights.

15. Petitioner has at all times been opposed to fluoridation of Chicago's public water supply and has been greatly interested in the litigation involved herein, but until now has been secure in the belief that Plaintiff-Appellant Walter Olson's active participation in the case was of such a nature as to adequately represent petitioner and his views and beliefs in connection therewith.

16. He respectfully states to the Court that this situation has now changed because of the untimely death of

Walter Olson in an automobile accident, leaving petitioner without representation and causing him to file this petition for leave to intervene.

17. Because of the untimely death of plaintiff-appellant Walter Olson, heretofore suggested to the Court by William C. Wines, Esq., no present party hereto is a member of the Christian Science faith, and the representation of your petitioner's aforesaid interest is or certainly may be inadequate, this circumstance arising at a time when, after more than seven and one-half years of litigation, the vital matters in question are pending for early decision by this Court.

18. In the event that the Court should, due to the fact that no Christian Scientist remained a party hereto, fail to rule upon the question as to whether fluoridation of the Chicago water supply violates the religious freedoms and rights of members of the Christian Science faith, including petitioner, the failure to do so would leave in effect the ruling of the trial Court herein, wherein it was decreed, erroneously as your petitioner avers, that fluoridation did not violate such religious freedom and rights.

19. Thus, due solely to the fact that there would be no party herein representing the interest of your petitioner as to his religious freedom and rights, he would be bound by a trial Court decree which is, he avers, erroneous, and should be reversed by this Honorable Court.

20. Petitioner would thus be bound by an erroneous trial Court decree, due solely to the lack of a ruling by this Honorable Court upon review of the same.

21. Your petitioner has just learned of the death of Walter Olson and makes this application to intervene in the above cause at the earliest possible time after being notified thereof.

22. If permitted to intervene herein, your petitioner would not seek to adduce further evidence and would be bound by any evidence heretofore adduced herein, including that adduced by the said Walter Olson.

23. If permitted to intervene herein, your petitioner would not present further pleadings, or further argument or briefs on the matters heretofore presented to the Court, but would be bound by all previous proceedings in the above cause.

24. If permitted to intervene herein, your petitioner would not raise new issues or add new parties, or in any manner otherwise seek to delay the expeditious and early ruling of the Court upon the issues herein.

Further deponent says not.

APPENDIX "C"

COUNTER-SUGGESTIONS IN OPPOSITION TO MOTION TO DISMISS APPEAL OF PLAINTIFF-APPELLANT OLSON.

Plaintiffs-Appellants, by Albert W. Dilling and Kirkpatrick W. Dilling, their attorneys, pursuant to leave of Court first obtained, file herewith counter-suggestions in opposition to motion to dismiss appeal of Plaintiff-Appellant Walter Olson.

Time for Making Motion to Dismiss

Section 592 of Volume 2 of *Illinois Law and Practice*, Appeal and Error (Page 535), entitled "Time for Making", includes the following:

> "A motion to dismiss an appeal should be made with reasonable promptness", citing *Miller* v. *Shackmann*, 311 Ill. App. 573, 37 N.E. 2d 370, in which a motion to dismiss was held to be too late where made long after time fixed for filing briefs of appellee.

The *Miller* case involved an appeal from an order of the Circuit Court of Jasper County denying, among other things, the petition for removal of the Public Administrator. The opinion by Mr. Justice Culbertson contains the following (Page 575):

> "On appeal to this court the appellee filed a motion to dismiss the appeal on the ground that appellant had failed to file a sufficient abstract of record. Such motion to dismiss the appeal was made long after the time fixed for the filing of briefs of appellee and was, therefore, made too late for consideration by this court . . . The motion to dismiss the appeal is, therefore, denied, and we shall proceed to a consideration of this case on the merits."

Section 592 continues, as follows: "and as a general rule a motion to dismiss an appeal made after submission of the appeal for decision on the merits is too late",

Citing five cases in foot-note 60, as follows:

"*People ex rel. Williamson* v. *Chicago, B. & Q. R. Co.*, 1912, 97 N.E. 245, 253 Ill. 100.

"*Cincinnati, I. & W. Ry. Co.* v. *People*, 1903, 69 N.E. 40, 205 Ill. 538.

"*Swain* v. *Hoberg*, 1942, 38 N.E. 2d 966, 312 Ill. App. 610, reversed on other grounds 44 N.E. 2d 38, 380 Ill. 412.

"*Thrift Inc.* v. *State Bank & Trust Co.*, 1939, 19 N.E. 2d 126, 298 Ill. App. 501.

"*Healy* v. *Ross*, 1936, 3 N.E. 2d 893, 286 Ill. App. 620."

The *Burlington Railroad* case involved an application for judgment and order of sale by E. G. Williamson, County Collector, against the property of the Chicago Burlington and Quincy Railroad Company, for certain taxes. The opinion contains the following, at page 104:

> "It is finally contended by the appellee that the appeal in this case was improperly allowed, as it does not appear from the record that the amount of taxes for which judgment was rendered was deposited with the county collector before the appeal was perfected. No motion was made in this court to dismiss the appeal, but briefs were filed by both parties and the case was submitted to the court upon its merits and taken for decision, without objection, upon the errors assigned. The objection comes, therefore, too late. *Wabash Railroad Co.* v. *People*, 196 Ill. 606."

The opinion in *Wabash Railroad Co.* case contains the following, at page 611:

> "It is objected to by the appellee that the appeal in this case was improperly allowed. No motion was made to dismiss the appeal, briefs were filed by both parties and the case submitted to the court for decision upon the errors assigned. The objection comes too late." Citing *Eggleston* v. *Royal Trust Co.*, 192 Ill. 101.

In the *C., I. & W. Ry. Co.* case, the opinion of this Court includes the following, at page 538.

> "As to the second proposition" (that is, that the appeal in the case was not properly taken), "the record shows that appellant deposited the sum of $510.18 with the county collector, in compliance with the statute, for the purposes of the appeal. But if that were not so, the objection comes too late. No motion was made to dismiss the appeal, but appellee joined in error and briefs were filed by both parties, and the case was submitted for decision on the errors assigned. The question whether the appeal was regularly taken does not arise on such submission, and it could only be presented by a motion to dismiss the appeal. *Wabash Railroad Co.* v. *People*, 196 Ill. 606."

The opinion in the *Swain* case includes the following (Page 611):

> "Upon this appeal, appellant makes no assignment of errors relied upon for reversal. Subsequent to the time the case had been reached on call and assigned for opinion, appellee filed her motion to dismiss the appeal on the ground that appellant had made no assignment of errors as required by the rules. Appellant thereafter filed his countermotion, setting up among other things that appellee's motion came too late and could not be considered, because not filed until after the case had been reached on call and taken under advisement by the court for opinion. Appellant

further urged that the statement of facts in his brief constituted a reasonable compliance with the rules; that appellee by filing her brief admitted the appellant's brief was not jurisdictional. Appellant asks that in the event the court should determine that he should make a statement of the errors relied upon for reversal, he be given leave to reprint his brief and argument with such assignment incorporated therein, and file same within a short day to be fixed by the court.

"Under the former Practice Act, the Supreme Court in the case of *Armour* v. *Pennsylvania R. Co.*, 353 Ill. 575, at page 580 of the opinion, in speaking of the necesssity for an assignment of errors, uses the following language: 'An assignment of errors is not a mere matter of form that may be waived or dispensed with by the agreement of the parties; but it is essential to a review of the cause and in its absence the appeal of writ of error will be dismissed'."

The *Thrift, Inc.* case involved an appeal by the defendants from a judgment for $2,010.60 in an action brought by the plaintiff based upon the breach of a certain contract in writing. The opinion of the Appellate Court contains the following, commencing at page 505:

"The plaintiff suggests that the defendants' appeal must be dismissed, not having been perfected within 90 days after the judgment appealed from. It appears from the record that judgment was entered on January 17, 1938. The notice of appeal was filed and served on May 4, 1938, more than 90 days after the entry of the judgment. Plaintiff suggests that under section 76 of the Civil Practice Act (Ill. Rev. Stats. 1937, ch. 110, §200 (Jones Ill. Stats. Ann. 104.076), appellate jurisdiction had expired unless something can be done to toll the statute.

"The reply of the defendants is that on January 26, 1938, the defendants filed what is designated as a mo-

tion for a new trial, which was considered by the court after argument and on February 9, 1938 the motion for a new trial was denied.

"It does appear from the record that the plaintiff, by attorney, made the statement in court that it would not stand on a technical objection. However, the proper practice to have been taken by the plaintiff in this matter was a motion to dismiss the appeal. The Supreme Court in passing upon a like matter in the case of *Cincinnati, I. & W. Ry. Co.* v. *People ex rel. Moffett*, 205 Ill. 538, said:

> " 'As to the second proposition, the record shows that appellant deposited the sum of $510.18 with the county collector, in compliance with the statute, for the purposes of the appeal. But if that were not so, the objection comes too late. No motion was made to dismiss the appeal, but appellee joined in error and briefs were filed by both parties, and the case was submitted for decision on the errors assigned. The question whether the appeal was regularly taken does not arise on such submission, and it could only be presented by a motion to dismiss the appeal. *Wabash Railroad Co.* v. *People*, 196 Ill. 606.'

"In *Wabash R. Co.* v. *People ex rel. Funck*, 196 Ill. 606, the court made this statement:

> " 'It is objected by the appellee that the appeal in this case was improperly allowed. No motion was made to dismiss the appeal, briefs were filed by both parties and the case submitted to the court for decision upon the errors assigned. The objection comes too late.'

"So that the plaintiff having failed to make a motion to dismiss the appeal and having submitted the cause for this court's decision upon the merits, we shall consider the case upon the suggestions for relief other than the question of dismissal, which we have concluded is not properly before this court."

It is respectfully submitted that the motion to dismiss the appeal of Appellant Walter Olson filed herein purportedly on his behalf is "too late" and that the said motion should be denied.

What is Status in this Cause of William C. Wines, Esq.?

For seven and a half years, uninterruptedly, Albert W. Dilling and Kirkpatrick W. Dilling have represented and been counsel for plaintiffs-appellants in this cause, including Walter Olson. During that time, there has been no criticism or complaint whatsoever by Walter Olson, or any other plaintiff-appellant, concerning the conduct of this case by the said attorneys. As a matter of fact, counsel for all parties were commended by Master Goldberg for the manner in which the case had been conducted. Plaintiff Olson has not discharged Messrs. Dilling as his counsel herein. Nor has he directed them to cease the pending appeal herein. No substitution of attorneys' has been filed in this cause. So the said Messrs. Dilling are still attorneys for all the plaintiffs, including Walter Olson.

Whom, then, does William C. Wines represent in this cause? Some light was thrown upon this matter on December 24, 1963 at the hearing before Honorable Walter V. Schaefer when Mr. Wines filed the motion to dismiss the appeal, purportedly on behalf of Plaintiff-Appellant Olson.

He stated that his fee for his services in connection was not being paid by Mr. Olson but by the Christian Science Church. This, of course, is in a measure borne out by the rather meager "verified suggestions" filed herein in Mr. Olson's behalf in support of Mr. Wines' motion.

As a matter of fact, are not the circumstances involved tantamount to having the motion to dismiss Mr. Olson's appeal that of a third party without any standing at all

so far as this cause is concerned, in complete violation of applicable law? It is clear that the moving spirit behind this motion to dismiss an appeal is someone in The First Church of Christ, Scientist, in Boston, Massachusetts.

Plaintiff-Appellant Olson's Testimony

Plaintiff-Appellant Olson's testimony under oath appears in the abstract, pages 122 to 127, inclusive. In it, he unequivocally voiced his objections to fluoridation of Chicago's water supply, stating that, as a member of the Christian Science Church, he is opposed to fluoridation of the City water supply.

He has objection to the fluoridated water but drinks it despite his objection. He was opposed to fluoridation prior to the time of the institution of the fluoridation program by the City and his attitude has continued to this time (that is, the time when he was testifying).

There is nothing in the record in this cause to indicate that Mr. Olson has changed his views concerning fluoridation.

Grounds for Motion

Volume 2 of *Illinois Law and Practice*, already cited above, states the following (Section 591, Page 534), under the title "Form and Requisites" (of Motion to Dismiss an Appeal):

> "A motion to dismiss an appeal shall set out the grounds on which it is based with particularity."

The motion to dismiss appeal filed herein, purportedly on behalf of Mr. Olson does not set out grounds "with particularity". The verified suggestions in support of the

motion that "as a result of that conference" (that is with the General Counsel of the Church and others) "and other considerations" a withdrawal is desired.

Just who were these "other members" of the Church, and what are the "other considerations" mentioned? The motion is insufficient, as it stands, and it should be denied.

In *Corpus Juris Secundum*, Vol. 5, Appeal and error, Section 1353, page 501, under the title, "Grounds for Dismissal", the following appears:

> "Appeals will not be dismissed on mere technicalities or inaccuracies, but only for good reason or on substantial grounds. Thus a motion to dismiss an appeal must be made on some legal ground recognized by statute or rules of Court, or otherwise present substantial defects of such a nature as to preclude a fair determination of the cause on appeal, or the motion will be denied". *Citing First Nat. Bank of Jonesboro* v. *Road District No.* 8, 58 N.E. 2nd 884, 389 Ill. 156. Also, *Litchfield Nat. Bank* v. *McBride*, 7 N.E. 2d 348, 289 Ill. App. 420.

Conclusion

In conclusion, we urge that the motion to dismiss appeal be denied and that this Court consider this cause on its merits just as it was submitted to the Court on November 26, 1963, when it was argued orally.

The following affidavit was filed in support of the counter-suggestions:

AFFIDAVIT

Albert W. Dilling, being first duly sworn, on oath deposes and says:

1. He is one of the attorneys for plaintiffs-appellants in the above-entitled cause.

2. He prepared the counter-suggestions in opposition to the motion to dismiss the appeal of Walter Olson, one of the plaintiffs-appellants in this cause.

3. Those matters contained in the said counter-suggestions that are not a matter of record are true in substance and in fact.

Further deponent says not.

APPENDIX "D"

Decree of Judge Samuel B. Epstein, entered July 10, 1962:

This cause having come on to be heard by the court upon the third amended petition for injunction of plaintiffs, Alice Schuringa, Anna C. Fout, Dr. Paul Thorelius, and Walter Olson, by their attorneys, Albert W. Dilling and Kirkpatrick Dilling, and upon the joint and several answer of the defendants City of Chicago, a Municipal Corporation, Richard J. Daley, indivdually and as Mayor of said City, Carl H. Chatters, individually and as Comptroller of said City, James W. Jardine, individually and as Commissioner of the Department of Water and Sewers of said City, and W. W. De Berard, individually and as Deputy Commissioner for Water of said Department and Chief Water Engineer in Charge of the Bureau of Water, by John C. Melaniphy, Corporation Counsel of the City of Chicago, and William J. Kafka, Assistant Corporation Counsel, their attorneys, and the cause having been referred by the Court to Honorable Mayer Goldberg, Master in Chancery of the Superior Court of Cook County, for the purpose of taking testimony and for a report of his findings of fact and conclusions of law and recommendations thereon; and the parties having appeared and testimony having been adduced on all of the issues created by the pleadings and upon the transcript of the testimony taken before said Master, and exhibits introduced and admitted, and the Master having made his report, and the plaintiffs having filed objections to said report, and said objections have been overruled by the Master, and the Court having examined the pleadings, the transcript of evidence, the exhibits, the Master's report, and the objections filed and entered as

exceptions thereto, and having heard the arguments of counsel for the respective parties hereto and the Court being fully advised in the premises, Finds:

1. That the Court has jurisdiction of the parties hereto and of the subject matter hereof;

2. That the Master in Chancery has proceeded in all respects in accordance with the law and the order of reference herein;

3. That the objections filed herein, by the plaintiffs, and entered as exceptions to said Master's report, should be overruled;

4. That all the findings of fact made by the Master in his report are in accordance with the evidence and that the conclusions of law and the recommendations set forth by the Master are proper in all respects so that the Master's report should be approved by this Court.

It Is Therefore Ordered, Adjudged And Decreed:

1. That the Master's report shall be and is hereby adopted, confirmed and approved in every respect and all objections and exceptions thereto are hereby overruled;

2. That this cause shall be and is hereby dismissed for want of equity.

3. That the fee and charges of Master in Chancery, Mayer Goldberg, in the sum of $6,937.50 as set forth in the Master's certificate of service fees and charges filed with this report is hereby approved and taxed as costs, one-half against the plaintiffs, Alice Schuringa, Anna C. Fout, Dr. Paul Thorelius and Walter Olson, and one-half against the defendant, City of Chicago, and the same to be paid to said Master in Chancery, Mayer Goldberg.

4. It is hereby certified that there is involved in this cause the validity of a Municipal Resolution, and further involved herein questions regarding the Constitutions of the State of Illinois and the United States, and that in the opinion of the Court, the public interest requires that in the event of an appeal shall be taken, it shall be taken directly to the Supreme Court of Illinois.

APPENDIX "E"

Section 26.1, Chapter 110, Illinois Revised Statutes, entitled "Intervention", so far as pertinent, reads as follows:

> "(1) Upon timely, application anyone shall be permitted as of right to intervene in an action: ". . . (b) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant will or may be bound by a judgment decree or order in the action. . . .
>
> "(5) A person desiring to intervene shall present a petition setting forth the grounds for intervention, accompanied by the initial pleading or motion which he proposes to file. . . .
>
> "(6) An intervenor shall have all the rights of an original party, except that the court may in its order allowing intervention, whether discretionary or a matter of right, provide that the applicant shall be bound by orders, judgments or decrees theretofore entered or by evidence theretofore received, that the applicant shall not raise issues which might more properly have been raised at an earlier stage of the proceeding, that the applicant shall not raise new issues or add new parties, or that in other respects the applicant shall not interfere with the control of the litigation, as justice and the avoidance of undue delay may require."

Resolution adopted June 16, 1954 by the Chicago City Council providing for fluoridation of part of the City's public water supply.

> "WHEREAS, It has been proved, both through the medium of scientific testing and through the many

years of actual practical experience of various municipalities throughout the country, that the presence of fluorides in the drinking water supplied the public has a known beneficial effect upon the condition of the teeth of the entire population both in adults and in children, but particularly in the case of children; and

"WHEREAS, The Illinois Department of Public Health encourages and urges the addition of fluorides to public water supplies so as to maintain an optimum fluoride level of 1.0 to 1.5 parts per million in communities in which the fluoride level is below that percentage; and

"WHEREAS, It has been determined on the basis of study and investigation that this element is not found in the present supply of water distributed to the people of Chicago; and

"WHEREAS, Long-term studies made at such divergent points as Grand Rapids, Michigan; Newberg, New York; Brantford, Ontario; and Evanston, Illinois, have demonstrated that the addition of one part of fluoride to one million parts of water supplied to said municipalities reduced the incidence of dental caries in the permanent teeth of children as much as from 46.2 to 77 percent and has produced no deleterious effect of any kind on any persons located in said municipalities who have been drinking the water so fortified; and

"WHEREAS, Approval of the introduction of fluoride into the water supply of the City of Chicago has been given by the American Medical Association, Chicago Medical Society, American Dental Association, Chicago Dental Society, the U.S. Public Health Service, and National Congress of Parents and Teach-

ers, Chicago Board of Health, the Cook County Department of Public Health, the Illinois Department of Public Health and the American Water Works Association; and

"WHEREAS, As a result of a resolution introduced in the City Council on October 31, 1951, by Alderman Alfred J. Cilella (36), a Special Subcommittee of the Health Committee was appointed to study the entire public health matter of fluoridation and

"WHEREAS; This Subcommittee has carried on extensive investigations (its Chairman also has visited several municipalities which have fluoridated their water supplies), has conducted numerous highly publicized public hearings at which ample opportunity was given to all citizens to express their opinions, sentiments, and scientific data; and

"WHEREAS, This Subcommittee has found that 'fluoridation is not harmful', that 'fluoridation is beneficial', and the cost is nominal and within the general capabilities of the City of Chicago; and

"WHEREAS, Nine hundred and sixty-one other American communities have added fluorine to their water supplies and now are experiencing reductions in dental decay; and

"WHEREAS, Fluoridation also has been proved by the office of the Surgeon General of the U. S. Army, National Institute of Dental Research, American Public Health Association, Association of State and Territorial Health Officers and Commission on Chronic Illness; and

"WHEREAS, There are more than 1,127,000 children who now can benefit from fluoridation—benefits

which will carry over into and throughout their adult life; and

"WHEREAS, The Corporation Counsel of the City of Chicago has ruled that:

> " 'It is our opinion that the use of fluoride in the water supply of Chicago as a health measure under scientific control would not violate any constitutional or other legal rights of any water users';

and

"WHEREAS, The trend of public sentiment and demand preponderately is in favor of the fluoridation of the present supply of drinking water provided in the Chicago area; and

WHEREAS, Only in compliance with the regulations of the Illinois Department of Health and only after engineering plans and specifications and methods of operation incidental to such a project have been approved by said Illinois Department of Public Health, can any program for the fluoridation of Chicago's water be put into operation:

NOW, THEREFORE, BE IT RESOLVED, That the fluoridation of the water supplied for drinking purposes through the Chicago waterworks system is hereby declared to be in the interests of the public health, and that steps for the introduction of fluoride in a concentration adequate for safety and in accordance with the regulations prescribed by the Illinois Department of Public Health be undertaken by the City of Chicago through its Department of Water and Sewers with the cooperation of the Chicago Board of Health by January 1, 1955."

LIBRARY
SUPREME COURT

IN THE

Supreme Court of the

OCTOBER TERM,

No. 595

ALICE SCHURIN

vs.

CITY OF CHICA

RESPONDENTS' BRIEF

JOHN C. MELA
Corporation
511 City Ha

SYDNEY R. DREBIN,
MARVIN E. ASPEN,
Assistant Corporation Counsel,
Of Counsel.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICA

Office-Supreme Court, U.S.
FILED
NOV 9 1964
JOHN F. DAVIS, CLERK

. U. S.

United States

1964.

A, ET AL.,
Petitioners.

), ET AL.,
Respondents.

N OPPOSITION.

IPHY,
ounsel of the City of Chicago.
, Chicago, Illinois, 60602,
ttorney for Respondents.

INDEX.

	PAGE
Opinion Below	1
Questions Presented	1
Argument: Reasons For Denying the Writ	3
I. An individual not a party to the trial and appeal below may not petition for writ of certiorari before this court	3
II. The Illinois Supreme Court properly refused to consider the issue of whether increasing the amount of fluorine already present in the water supply of the City of Chicago violates freedom of religion	4
III. Increasing the amount of fluorine already present in the water supply of the City of Chicago is not violative of due process of law	8
IV. Increasing the amount of fluorine already present in the water supply reduces tooth decay without adverse side effects	9
Conclusion	11
Respondents' Appendix A	13
Respondents' Appendix B	14

CITATIONS.

Cases.

Baer v. Bend, 292 P. 2d 134 (Ore. 1956) 7

Chapman v. Shreveport, 74 S. 2d 142 (La. 1954), certiorari denied 348 U. S. 892 6

de Aryan v. Butler, 260 P. 2d 103 (Cal. 1953), certiorari, denied 347 U. S. 1012 7

Dowell v. Tulsa, 273 P. 2d 859 (Okla. 1954), certiorari denied 348 U. S. 912 5

Jackson v. Pioletti, 346 Ill. App. 569, 105 N. E. 2d 779 (1952) 3

Krause v. Cleveland, 127 N. E. 2d 609 (Ohio 1955), certiorari denied 351 U. S. 935 7

Readey v. St. Louis County Water Company, 352 S. W. 2d 622 (Mo. 1962) 5

Ryan v. Attorney General (Ireland 1964) 7

Schuringa v. City of Chicago, 30 Ill. 2d 504, 198 N. E. 2d 326 (1964) 1, 5, 8, 9

Zorach v. Clausen, 343 U. S. 306 (1952) 4

Statutes.

Section 26.1 of the Illinois Civil Practice Act (Ill. Rev. Stat. 1963, ch. 110, par. 26.1) 3

Miscellaneous.

C. J. S. Federal Courts, § 273 (1960) 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 595.

ALICE SCHURINGA, ET AL.,

Petitioners,

vs.

CITY OF CHICAGO, ET AL.,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION.

OPINION BELOW.

The opinion of the Illinois Supreme Court is correctly cited by petitioners as *Schuringa, et al.* v. *City of Chicago, et al.*, 198 N. E. 2d 326 (1964) and is set forth in full as Appendix "A" of their petition (Petition for Writ of Certiorari, p. 2 and App. 1). The official citation of this opinion in the Illinois Reports is 30 Ill. 2d 504 (1964).

QUESTIONS PRESENTED.

1. May an individual not a party to the trial and appeal below petition for writ of certiorari before this Court?

2. Did the Illinois Supreme Court properly refuse to consider the issue of whether increasing the amount of fluorine already present in the water supply of the City of Chicago violates freedom of religion as guaranteed by the First Amendment to the United States Constitution?

3. Does increasing the amount of fluorine already present in the water supply of the City of Chicago violate due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution?

4. Has increasing the amount of fluorine already present in the water supply proved to reduce tooth decay without adverse physical side effects?

REASONS FOR DENYING THE WRIT.

I.

An individual not a party to the trial and appeal below may not petition for writ of certiorari before this court.

Jose M. Lenone was not a party in the trial court below. Nor was he a party to the appeal before the Illinois Supreme Court. *Subsequent* to the filing of the briefs and oral argument, Lenone sought leave of the Illinois Supreme Court to intervene therein (Petition for Writ of Certiorari, App. 16). Leave to intervene was denied by the full court on January 21, 1964, and the court rendered its decision on March 18, 1964.

Both in the title of the petition for writ of certiorari and in the argument therein, Lenone purports to be a petitioner. The record is clear that he is not such. Thus, any contention now raised by Lenone should be disregarded by this Court. C. J. S. Federal Courts, § 273 (1960).

Assuming *arguendo* that Lenone is not estopped from arguing before this Court that his petition to intervene before the Illinois Supreme Court was erroneously denied, an examination of the Illinois statute relating to intervention is in order. The appropriate statute is Section 26.1 of the Illinois Civil Practice Act (Ill. Rev. Stat. 1963, ch. 110, par. 26.1), set forth in part by petitioners (Petition for Writ of Certiorari, App. 34). This statute clearly states that leave to intervene is not a matter of right, but is solely "*at the discretion*" of the court. The denial of Lenone's petition, presented after briefs had been filed and oral argument held, was not an abuse of discretion by the court below. *Cf. Jackson* v. *Pioletti*, 346 Ill. App. 569,

105 N. E. 2d 779 (1952). Moreover, intervention is a matter of state practice and procedure, which this Court will not review. *Cf. Zorach* v. *Clausen*, 343 U. S. 306 (1952).

For these reasons, Lenone is not a proper petitioner before this Court and the contentions raised by him should not be considered.

II.

The Illinois Supreme Court properly refused to consider the issue of whether increasing the amount of fluorine already present in the water supply of the City of Chicago violates freedom of religion.

Petitioners argue that the court below erred in not considering the contention of Walter Olson that the water fluoridation program of the City of Chicago is in violation of the First Amendment to the United States Constitution. This contention was raised solely by Olson in the court below; it was not raised by the other petitioners. On December 18, 1963, Olson sought leave to dismiss his appeal *as a result* of his consultation with The First Church of Christ, Scientist, in Boston, Massachusetts. See Respondents' Appendix A. On January 2, 1964, the Illinois Supreme Court allowed Olson leave to dismiss his appeal. Shortly thereafter Olson died, and his attorney, William C. Wines, at "the request of the Legal Department of the First Church of Christ, Scientist, in Boston, Massachusetts" suggested to the Illinois Supreme Court that Olson was dead and "that therefore this appeal has abated and become moot so far as he is concerned." See Respondents' Appendix B.

Since Olson requested prior to decision to dismiss his appeal, the Illinois Supreme Court properly ordered such dismissal. Moreover, the issue is doubly moot in that Olson died prior to decision. The Illinois Supreme Court

in the case at bar, held (30 Ill. 2d 504, at p. 508) that it "is axiomatic that this court, unless the public interest demands it, will not consider abstract or moot questions (citations omitted)". In this case, the public interest does not demand a consideration of the "religious issue" in that (1) Olson, suing as a Christian Scientist, moved to dismiss with the acquiescence of the Christian Scientist Church, (2) "mootness" was suggested by the Christian Scientist Church subsequent to Olson's death, (3) the issues raised by Olson had been unanimously decided adversely to him by other state courts.

In *Dowell* v. *Tulsa*, 273 P. 2d 859 (Okla. 1954), *certiorari* denied 348 U. S. 912, plaintiffs argued that the city fluoridation ordinance was "in violation of the 'free exercise' of religion, which, in the First Amendment of the United States Constitution, Congress is forbidden to prohibit. . . ." The court, in refuting this argument, held (p. 864) that:

> ". . . in the contemplated water fluoridation, the City of Tulsa is no more practicing medicine or dentistry or manufacturing, preparing, compounding or selling a drug, than a mother would be who furnishes her children a well-balanced diet, including foods containing vitamin D and calcium to harden bones and prevent rickets, or lean meat and milk to prevent pellagra. No one would contend that this is practicing medicine or administering drugs."

In *Readey* v. *St. Louis County Water Company*, 352 S. W. 2d 622 (Mo. 1962), the trial court enjoined the county fluoridation program on a taxpayer's petition. While appeal was pending, an *amicus curiae* brief was filed to the effect that the fluoridation ordinance "is unconstitutional because it submits Christian Scientists in St. Louis County to forced medication against their religious beliefs and thereby deprives them of their constitutional right under the First Amendment to the United States Constitution." The Court treated the issue in this manner (p. 628):

"It is suggested by inference that we may take judicial notice of the fact that it is a religious belief of Christian Scientists that no material applications for relief of disease should be employed. But if, in the public interest, we should wish to resolve the question posed in amicus' brief, even though the constitutional question was not raised below nor preserved for appellate review, and even if we should take judicial notice that the belief suggested by counsel is a religious belief of Christian Scientists, still we should not know whether, nor could we assume that, it would violate that belief for one to consume water which theretofore had contained one-half part fluoride, simply because another one-half part had been added. Furthermore, if we should assume that the fluoride ion in water constitutes medication as to the individual and if we should further assume that the ingestion of that medication violates a religious belief of any county resident, then it must follow that forced medication now exists and that the enforcement of the ordinance in question would not change the situation in that respect."

In *Chapman* v. *Shreveport*, 74 S. 2d 142 (La. 1954), *certiorari* denied 348 U. S. 892, the court treated a similar argument in the same manner (p. 146):

"Appellees contend that it is arbitrary and unreasonable to compel a person to submit to the taking of preventive medicine except for the purpose of controlling the spread of contagious or infectious diseases. Their argument is not entirely appropriate to the instant case. In the first place there is no direct compulsion on anyone to drink the water. The compulsion at most is an indirect one, but it cannot be questioned, of course, that the fluoridation is undertaken with the view that the citizens or a large majority of them will receive its benefits by drinking the public water. The witnesses from the dental profession considered that the addition of fluoride to the water was not medicating it in the generally accepted sense, but was adding to it one of the mineral properties found naturally in water in some sections of the country."

See also: *de Aryan* v. *Butler*, 260 P. 2d 98, 103 (Cal. 1953), *certiorari* denied 347 U. S. 1012; *Krause* v. *Cleveland*, 127 N. E. 2d 609, 613 (Ohio 1955), *certiorari* denied 351 U. S. 935; *Baer* v. *Bend*, 292 P. 2d 134, 136-140 (Ore. 1956).

In the Irish decision of *Ryan* v. *Attorney General* (decided July 3, 1964), the High Court of Dublin refutes petitioners' characterization of a municipal water fluoridation program as "mass medication":

> "The Court does not accept that the fluoridation of water is, or can be described as, the mass medication or mass administration of 'drugs' through water. It has already been pointed out that the fluoridation is a process by which an element which naturally occurs in water is, in the case of a particular water supply, raised to a level of concentration at which it is found in wholesome water and that the fluoride ions thus added are not different in nature or action from the fluoride ions occurring naturally in water.
>
> "This matter was examined in detail by the Commission set up by the Government of New Zealand to enquire into 'the Desirability or Otherwise of the Fluoridation of Public Water Supplies' and the conclusion was reached that 'fluoride is not a drug but a nutrient and fluoridation is a process of food fortification.' It is, in the opinion of the Court, a misuse of words to refer to this process as mass medication or mass administration of drugs."

For these reasons, the Illinois Supreme Court properly refused to consider the contention that the fluoridation program of the City of Chicago "was compulsory medication which violated the right to religious freedom."

III.

Increasing the amount of fluorine already present in the water supply of the City of Chicago is not violative of due process of law.

Petitioners argue that the exercise of police power by the City of Chicago in fluoridating its waters does not bear a proper relation to the promotion of public health and, thus, is violative of due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution. Petitioners' contention is a much litigated one. The court below noted (30 Ill. 2d 504, at p. 509):

> "* * * In this country, on the occasions where the matter has been subjected to judicial scrutiny, there has been unanimous accord that the fluoridation of water by one part of fluoride to a million parts of water is a reasonable and proper exercise of the police power in the interest of the public health, and that it is not subject to constitutional infirmities thus far conceived. (See: *Chapman* v. *City of Shreveport*, 225 La. 859, 74 So. 2d 142, *certiorari* denied 348 U. S. 892, 99 L. ed. 701; *Kraus* v. *City of Cleveland*, 163 Ohio St. 559, 127 N. E. 2d 609, *certiorari* denied 351 U. S. 935, 100 L. ed. 1463; *Dowell* v. *City of Tulsa* (Okla. 1954), 273 P. 2d 859, *certiorari* denied 348 U. S. 912, 99 L. ed. 715; *de Aryan* v. *Butler*, 119 Cal. App. 2d 674, 260 P. 2d 98, *certiorari* denied 347 U. S. 1012, 98 L. ed. 1135; *Froncek* v. *City of Milwaukee*, 269 Wis. 276, 69 N. W. 2d 242; *Readey* v. *St. Louis County Water Co.* (Mo. 1961), 352 S. W. 2d 622; *Baer* v. *City of Bend*, 206 Ore. 221, 292 P. 2d 134; *Kaul* v. *City of Chehalis*, 45 Wash. 2d 616, 277 P. 2d 352; *City of Fort Pierce* v. *State ex rel Altenhoff* (Fla. 1962), 143 So. 2d 879. *Cf. Wilson* v. *City of Council Bluffs* (253 Ia. 162), 110 N. W. 2d 569). On the other hand, we are told in plaintiffs' brief that the highest courts of Canada and Sweden have ruled against fluoridation, the former apparently concluding that such a

program was beyond the statutory authority of municipalities (*Municipality of Metropolitan Toronto* v. *Village of Forest Hill* (1957), 9 D. L. R. 2d 113), and the latter apparently concluding, among other things, that there were possibilities of risk and disadvantage to health. (*Association for Promotion of Health* v. *Town of Norrkopping* (Sweden, 1961). The High Court of Dublin, Ireland, to the contrary, shares the American view to date that fluoridation of public waters is neither physically harmful nor legally improper. *Ryan* v. *Attorney General* (1963)."

The evidence in the court below was to the effect that drinking fluoridated water benefits growing children by rendering their teeth decidedly less vulnerable to decay and that this benefit lasts throughout a lifetime. Dentists are not in dispute that tooth decay is a disease which may manifest symptoms throughout the anatomy. The fact that dental caries is not a *communicable* disease that can cause an epidemic does not detract from its seriousness as affecting the public health of the inhabitants of the City of Chicago. Thus, the City's fluoridation program bears a reasonable relation to the public health and is a valid exercise of its police power.

IV.

Increasing the amount of fluorine already present in the water supply reduces tooth decay without adverse side effects.

Petitioners argue that water fluoridation is not beneficial and is, perhaps, harmful (Petition for Writ of Certiorari, p. 28). Evidence adduced in the court below and before other courts is to the contrary on both counts.

The court below, after carefully scrutinizing the scientific evidence contained in the voluminous trial record, concluded (30 Ill. 2d 504, at p. 516):

"From all of the evidence in this record, as well as the scientific, professional and legal authorities which have been brought before us, there appears to be extraordinary accord that fluorides act to prevent and reduce tooth decay, and that artificial fluoridation to the extent of one part per million parts of water will not, either presently or cumulatively, result in harmful systemic effects. Apart from the extensive scientific research which led to these conclusions, equally impressive are the painstaking legislative inquiries at Federal, State and local levels which have preceded the endorsement and adoption of fluoridation programs. As we see it, the closest factual issue arises over the question whether artificial fluoridation, to the extent here involved, will in fact produce what could be described as harmful effects in the matter of mottled teeth. At best, however, the evidence with respect thereto presents only a debatable question where there is room for difference of opinion, and while it is our belief the proof is more susceptible to a conclusion that severe and disfiguring endemic dental fluorosis will not result from artificial fluoridation to the extent practiced here, it is enough to say it is an area in which the legislative judgment must prevail. We conclude that the artificial fluoridation of water is reasonably related to the public health, and that the program adopted by Chicago is necessary and suitable for the protection of public health."

The conclusions of all other state tribunals considering this issue have been the same. See cases cited in Point III herein.

CONCLUSION.

This Court has refused certiorari on at least four other occasions when the issues set forth herein by petitioners have been presented to it. Petitioners' contentions are merely restatements of arguments made and uniformly rejected in these prior cases. The petition states no new basis for the granting of the writ of certiorari.

For these reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

JOHN C. MELANIPHY,
Corporation Counsel of the City of Chicago,
511 City Hall, Chicago, Illinois, 60602,
Counsel for Respondents.

SYDNEY R. DREBIN,
MARVIN E. ASPEN,
Assistant Corporation Counsel.
Of Counsel.

RESPONDENTS' APPENDIX A.

Motion of Walter Olson to dismiss Appeal and Verified Suggestions in support thereof filed on December 18, 1963, which, omitting caption and signatures, are as follows:

MOTION TO DISMISS APPEAL.

Walter Olson, by William C. Wines, his attorney, moves this Court for leave to dismiss his appeal in this case and to consent to any judgment that may be rendered against him for costs on the cross-appeal of the City of Chicago.

Verified Suggestions in support of this Motion are appended hereto.

VERIFIED SUGGESTIONS.

WALTER OLSON, sworn, says that:

1. When he was requested and thereupon consented to become a plaintiff in this case, he had not consulted with The First Church of Christ, Scientist, in Boston, Massachusetts, he being an adherent of the Christian Science faith, concerning this case.

2. He has recently conferred with the General Counsel for and other members of The First Church of Christ, Scientist, in Boston, Massachusetts, and as a result of that conference and other considerations desires to withdraw his appeal from the Final Decree in this case and to consent to any judgment for costs that may be rendered upon the cross-appeal of the City of Chicago.

RESPONDENTS' APPENDIX B.

Suggestion of Death of Walter Olson filed on January 8, 1964, which omitting caption and signatures, is as follows:

WILLIAM C. WINES, sworn, says that:

1. He was engaged by Walter Olson, one of appellants in the above-entitled case, to file a motion to dismiss this appeal, which motion is now pending and undisposed of before this Court.

2. Since the filing of that motion Walter Olson has been killed in an automobile accident.

3. This affiant does not represent the estate of Walter Olson, but has been requested by the Legal Department of The First Church of Christ, Scientist in Boston, Massachusetts to suggest his death and to suggest that therefore this appeal has abated and become moot so far as he is concerned.

LIBRARY
SUPREME COURT, U. S.

No. 595

Office-Supreme Court, U.S.
FILED
NOV 14 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

ALICE SCHURINGA, ANNA C. FOUT, DR. PAUL THORELIUS, and JOSE M. LENONE,

Petitioners,

VS.

CITY OF CHICAGO, a Municipal Corporation, RICHARD J. DALEY, individually and as Mayor of said City, CARL H. CHATTERS, individually and as Comptroller of said City, JAMES W. JARDINE, individually and as Commissioner of the Department of Water and Sewers of said City, and W. W. DE BERARD, individually and as Deputy Commissioner for Water of said Department and Chief Water Engineer in Charge of the Bureau of Water,

Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

ALBERT W. DILLING
KIRKPATRICK W. DILLING
188 West Randolph Street
Chicago, Illinois 60601
Attorneys for Petitioners

UNITED STATES LAW PRINTING CO., CHICAGO 18, ILL. LAkeview 5-6581

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 595

ALICE SCHURINGA, ANNA C. FOUT, DR. PAUL THORELIUS, and JOSE M. LENONE,

Petitioners,

vs.

CITY OF CHICAGO, a Municipal Corporation, RICHARD J. DALEY, individually and as Mayor of said City, CARL H. CHATTERS, individually and as Comptroller of said City, JAMES W. JARDINE, individually and as Commissioner of the Department of Water and Sewers of said City, and W. W. DE BERARD, individually and as Deputy Commissioner for Water of said Department and Chief Water Engineer in Charge of the Bureau of Water,

Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

It is unfortunate, but true, that respondents' brief in opposition includes a great deal of unnecessary, irrelevant and actually improper matter, the effect of which is to becloud and confuse the issues before the Court.

For example, respondents now advance the proposition that the Chicago fluoridation program merely involves "increasing the amount of fluorine present in the water". This is most misleading, since no-one herein has at any time claimed that the Chicago water supply (as naturally drawn from Lake Michigan) would contain any significant amount of fluoride. Moreover, the City's own evidence herein conclusively shows that the fluoride being placed in the Chicago water supply is not intended to affect the water itself. In this regard, City Water Purification Engineer Baylis stated that fluoridation does not purify the water or make it more palatable (Ab. 322). Deputy Water Commissioner DeBerard testified that the fluoridation program is something additional, and he also stated (Ab. 242; T704):

> "We are under mandate by the City Council to put the fluorine in the water, and we carry out the operations."

The *sole and only purpose* of the Chicago fluoridation program is to administer fluoride to the entire population, for treatment of the teeth, the public water supply being employed simply as the vehicle, or "conduit".

Other examples of irrelevant and improper matter could be cited to the Court, but time and space preclude any detailed review thereof. Suffice it to say that petitioners sincerely hope that these attempts to "muddy the waters" will not obscure the vital and precious issues of Constitutional liberties involved herein, concerning which respondents have made no real response.

Petitioner Lenone Properly Before the Court

Respondents urge that Petitioner Lenone is not properly before the Court. It is contended that he cannot petition to this Court, because he was not an initial party to this

cause. It is further argued that the right to intervene, pursuant to the applicable Illinois statute, is "solely *'at the discretion'* of the court.", and that (citing the case of *Jackson* v. *Pioletti,* 346 Ill. App. 569, 105 N.E. 2d 779 (1952), the denial of petitioner Lenone's application to intervene in the Court below was therefore proper. Respondents further urge that this Court is powerless to review the action of the lower Court, pursuant to its decision in the case of *Zorach* v. *Clausen,* 343 U.S. 306 (1952).

No such limitations bar said petitioner. Shortly before plaintiff, Walter Olson, passed away, a motion to dismiss his appeal, then already argued and under advisement, was filed with the Illinois Supreme Court. However, on December 30, 1963, before an order on the motion was entered, he passed away. Petitioner Lenone immediately sought to intervene because the untimely death of Walter Olson had brought about a situation whereby no Christian Scientist remained a party herein. (See Appendix B herein, attached to petitioners' petition for writ of certiorari, for the text of his petition.)

Respondents herein have sought to bemuse the issues (by citing certain statements of one William C. Wines, Esq.) to infer that the Christian Science Church does not oppose fluoridation anymore. The said Wines did not actually represent Plaintiff Olson (see App. 27, attached to the petition for writ of certiorari). Nor did he have any standing in Court when he sought to have the said Olson withdraw his appeal. The Christian Science Church has never been a party to this cause. In any event, the position of the Church now is, and always has been, *unalterably opposed* to fluoridation.

Section 26.1 of the Illinois Civil Practice Act, under which said petition was filed, contains no time limitation whatsoever. In fact, it is clearly contemplated (Subsection (6) thereof) that a petition thereunder may be filed *subsequent to* "orders, judgments, or decrees theretofore entered". The provisions of the statute are clear and unmistakable in this respect. Understandably, respondents do not argue the statutory provisions, *per se*, but cite *Corpus Juris Secundum* (Section 273, "Federal Courts") as presumably barring this Court from reviewing the grievances presented herein by Petitioner Lenone. However, even said section states in part the following (page 749):

> "Where a party to an action in a state court specially claims a right under the Constitution or laws of the United States, the decision of the state court as to the sufficiency of the allegations to present such claim is not necessarily conclusive on the Supreme Court."

The lower Court had no discretion whatsoever to deny intervention by Petitioner Lenone. The case of *Jackson* v. *Pioletti* (346 Ill. App. 569, 105 N.E. 2d 779), urged by respondents as holding that intervention under Illinois law is "solely '*at the discretion*' of the court", was decided in 1952, *three years before* the statute involved herein was enacted, and is wholly inapplicable. Section 26.1 of the Illinois Civil Practice Act provides for intervention *as of right* "when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant will or may be bound by a judgment, decree or order in the action . . ." (See Appendix "E" attached to the petition for writ of certiorari, for applicable text.) Despite the fact that Petitioner Lenone's application to intervene was in meticulous compliance with this statute, the Court denied it, arbitrarily and without hearing.

Nor does this Court's decision in the case of *Zorach* v. *Clausen*, 343 U.S. 306, bar this Court from considering the violation of petitioner Lenone's religious and Constitutional rights, whereby he is being medicated against his will and religious compunctions through his only practicable source of water. Said case, which involved the question of "released time" in New York schools, is devoid of any mention whatsoever concerning intervention, and contains no ruling regarding the rights of an intervenor in a State Court.

This Court has repeatedly held that the vagaries of State procedure may not be interposed to defeat Constitutional liberties and rights.

Lower Court Violated Its Own Decisions

In its opinion herein, the Illinois Supreme Court dismissed the vital religious issues as being "moot", the opinion also stating "this Court, *unless the public interest demands it*, will not consider abstract questions . . ." (Emphasis added.)

Petitioners respectfully submit that, even had Petitioner Lenone not sought to intervene, the "public interest" nevertheless required consideration of these questions by the Court, and, in refusing to consider them, the Court violated its own rulings and precedents.

The case of *People* v. *Labrenz*, 411 Ill. 618, 104 N.E. 2d 769 (1952) involved the refusal, on religious grounds, of parents to consent to a blood transfusion for their child. The trial Court appointed a guardian, who authorized the transfusion. On appeal the State urged that the issues were "moot", the transfusion having been administered, the guardian discharged, and the proceeding dismissed. The

Illinois Supreme Court rejected these contentions, stating (page 772):

> "Before we reach the merits, we meet the State's contention that the case is now moot and should be dismissed because the blood transfusion has been administered, the guardian discharged, and the proceeding dismissed. Because the function of courts is to decide controverted issues in adversary proceedings, moot cases which do not present live issues are not ordinarily entertained . . .
>
> "But when the issue presented is of substantial public interest, a well-recognized exception exists to the general rule that a case which has become moot will be dismissed upon appeal. See cases collected in 132 A.L.R. 1185. Among the criteria considered in determining the existence of the requisite degree of public interest are the public or private nature of the question presented, the desirability of an authoritative determination for the future guidance of public officers, and the likelihood of future recurrence of the question.
>
> "Applying these criteria, we find that the present case falls within that highly sensitive area in which governmental action comes into contact with the religious beliefs of individual citizens."

Does not the case at bar necessarily fall "within that highly sensitive area in which governmental action comes into contact with the religious beliefs of individual citizens", involving as it does the subjecting of Petitioner Lenone and thousands of other members of his faith, *against their will*, to medication added to their sole source of water supply?

Petitioners respectfully submit that the Illinois Supreme Court should have ruled concerning the vital religious issues involved in this cause, and that its failure to do so was grossly erroneous.

Respectfully submitted,

ALBERT W. DILLING
KIRKPATRICK W. DILLING
188 West Randolph Street
Chicago 1, Illinois
Telephone: Central 6-8417
Attorneys for Petitioners